THE SUBSTANCE

OF

AN ARGUMENT

AGAINST THE

INDISCRIMINATE INCORPORATION OF CHURCHES

AND

RELIGIOUS SOCIETIES.

Delivered before the Committee of Courts of Justice of the House of Delegates of Virginia, on the evening of the 8th of January, and on subsequent evenings, in A. D. 1846, in reply to James Lyons and Wm. H. Macfarland, Esqs.

BY WM. S. PLUMER.

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To the people of Virginia this "Argument" is respectfully and gratefully inscribed, as an evidence of the Author's admiration of the general wisdom of the legislation of "the Mother of States and Statesmen" on the subject of civil and religious freedom.

WM. S. PLUMER.

Baltimore, Md., 1847.

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Mr. Chairman and Gentlemen of the Committee:

I wish it understood throughout this discussion that I am the chosen representative of no one, that I act on my own responsibility alone, and that I appear before you solely in the capacity of a citizen, who, though humble, has rights, who, though feeble, wishes to defend those rights, and who, though standing alone before you, believes that the interests of millions of the present and of future generations will be affected by your decision.

On some subjects a great deal ought to be said, or nothing. This is one of them. I do not, therefore, promise to be brief. I do, however, promise that I will not *intentionally* waste your time.

I could have wished that a subject of so vast importance, one side of which is supported by gentlemen so able and so estimable, could have had on the other side also an advocate worthy of its dignity. What is my rude armor against the polished, practised lances of these powerful giants of the law? I hesitate not to say that I fear and tremble, until I think of the goodness of my cause. My reliance is not on tact or strength, but on truth, and that truth illustrated by the uniform principles of human nature, and by the history of the world for fifteen hundred years.

This movement is not of recent origin. I have watched it for years. I have ever had but one opinion concerning its tendency. I believe it fraught with incalculable evils—evils not the less alarming because not apprehended. It has been well said, that "Men are wise and good in the business of all times except their own." Some legislation is like putting down pebbles in a walk. One more, or one less, makes no perceptible difference. But some legislation has a power like the central orb of the solar system. It carries worlds after it. It is so, if I mistake not, here. A principle, somewhat novel to our system, is to be introduced, and the widest possible application is forthwith to be made of it. Should the contemplated change be made in the course of our laws, the good or evil which will result will be on a vast scale.

I may as well here state, once for all and most explicitly, that I have no doubt the petitioners are all worthy persons, animated by patriotic sentiments, and entitled to as much esteem as any equal number of people in the Commonwealth. I believe that they deprecate the evils which I apprehend, as earnestly as any other persons. I esteem the petitioners as highly as they esteem one another. It gives me real pleasure to say so, and it gives me real pain to oppose them.

Let it not be supposed, however, that on the whole I come reluctantly to this discussion. Indeed, a high sense of duty, and a sincere desire for the best interests of this Commonwealth, make me willing to contribute my mite, on any proper occasion, towards the public good. Nor will I deny that I have great pleasure in knowing that in this discussion, measures and not motives, principles and not persons, great interests and not merely local questions, are the subject of debate. It is refreshing to the intellect, it is in itself wise and profitable sometimes to withdraw from petty details and look at fundamental truths. The fifteenth article of our Bill of Rights well asserts, that it is "only by a frequent recurrence to fundamental principles that free government or the blessings of liberty can be preserved."

I am also gratified that over this subject the violence of party politics can have no influence. If blessings flow from granting the chief prayer of the petition, all parties will share them; if evils, all parties must endure them. This subject, like that of Education, oaths, lotteries, and criminal law in many of its details, reaches the morals and religion of the country none the less powerfully because indirectly. It has, as I believe, and expect to show, a very intimate connection with liberty, civil and religious; and I would wish ever to be so a friend of religion as not to forget to be the friend of freedom, and so the friend of freedom as not to be the enemy of religion. While there-

fore, I neither am, nor admire a political theologian nor a theological politician, and while I never have divested myself of the right to read and judge and modestly to express my opinion on any matter affecting my country, even by going to the polls and voting for whom I pleased (especially if any one said I should not;) yet I have never debated in the newspapers or elsewhere the party politics of our country. I shall not do it now.

Nor is this a question between different branches of the Christian Church. It promises good or ill to all according to your decision; for the petitioners expressly say: "They do not ask for themselves any privilege or immunity, which they do not desire to see extended to their brethren of all other denominations. It would offend no less against their own sense of what is right and proper, than against the principles of our institutions, to bestow on any religious denomination privileges, which were not made free and open to all." You are not then called, sir, to listen to a debate, full of the *odium theologicum*.

I am also happy in knowing that the petitioners, and myself are alike agreed, that true religion, vital godliness, an enlightened christian ministry, and solemn acts of public worship are essential to the well-being of nations. Of this truth history is a witness hardly less clear in its declarations than revelation itself. This is not a contest, therefore, between religion and irreligion, but it is a question as to the best mode of promoting religion, and other great interests of the country.

CHURCH PROPERTY NOW SECURE.

Nor is the question whether houses of worship, and their appurtenances, parsonages, denominational school-houses, burying grounds, &c. shall be protected. All are agreed that they ought to be. I contend that they are already as far beyond the reach of the wrong-doer in this as in any part of the world. *First*, there is thrown around them the sanction of public sentiment and public manners, more powerful than all laws. "Quid leges sine moribus?" So long as this kind of property is safe at all, it is safe under the uniform, universal sentiment of Virginia. The petitioners have not stated, nor will those who represent them state a single case of abuse of property of this description. If they shall, it will be but as a drop in the bucket, compared with the enormous perversions of church property in States, which have pursued a line of policy, such as is now sought to be introduced into our laws. Besides those bones of contention, *free churches*, and churches for many years utterly forsaken by the denomination, which erected them, I have never known it alleged that any house of worship in the Commonwealth had passed into the hands of those who

perverted it to wrong ends, except in one instance. This house stood on a piece of land, to which a title had never been made by the proprietor. It came into the possession of a mechanic. For many years no man had expressed a desire to use it as a place of worship. There were in the whole county not three people belonging to the denomination, which had erected it, and none of them were in its vicinity. It was rapidly going to decay. So the proprietor of the land pulled down the house, and used the timber in the erection of a shop for his own use. From that day public confidence was withdrawn from him, and he was ere long compelled for the want of patronage to leave the county. Such is public opinion, and so certainly are its judgments executed on all, who violate in this matter the dictates of propriety. Nor are our houses of worship and appurtenances left merely to this great safeguard, for—

Secondly, we have recourse to trusteeships. In this way the greater part of such property is held. Where have trustees by any delinquency wronged the rightful proprietors? I will not say that *no* such case has occurred. I can say that I never heard of one in Virginia. The gentlemen on the other side neither have cited, nor will cite such a case. I will cite a case on the other side—a case known to some, who hear me. Some years since the doctrines of the Reformers (Campbellites) made considerable progress in one of the large Baptist churches in Va. A warm state of feeling ensued. The Regular Baptists had the majority, but the only surviving trustee was a Reformer. He held the property and could in law have retained exclusive possession. But he never thought of such a thing. I have heard that he was a high-minded, honorable man. I believe he was. But if his principles had been weak, that public sentiment, already noticed, would have soon overcome the strongest reluctance to equity. But,—

Thirdly, the Legislature of Virginia on the 3rd of February, 1842 passed a law, providing for any cases, that might possibly arise. This law may be found in "Acts of Assembly" 1841—2 chap. 102, p. 60, and is as follows:

1. "*Be it enacted by the General Assembly*, That where any lot, or part of a lot, tract or parcel of land has been heretofore conveyed or devised *or shall hereafter be conveyed* or devised to one or more trustees for the use and benefit of any religious congregation, as and for a place of public worship, the same, and all the buildings, and other improvements thereupon, shall be held by such trustee or trustees (and their successors) for the purposes of the trust, and not otherwise.

2. *And be it further enacted*, That where any conveyance or de-

vise shall hereafter be made of such property for the use and benefit, and purpose aforesaid, the same shall not be void or frustrated by reason of the want of trustees to take and hold the same in trust; but trustees may be appointed in the manner hereafter directed.

3. *And be it further enacted*, That where such conveyance or devise has heretofore been made to a trustee or trustees, or where such conveyance or devise shall hereafter be made, whether by the intervention of trustees or not, the circuit superior court of law and chancery of the county or corporation where such property is or may be situate shall, on application of the attorney for the Commonwealth on behalf of the authorized authorities of any such religious congregation, have full power and authority to appoint trustees originally where there were none, or to substitute others from time to time, in cases of death, refusal or neglect to act, removal from the county or corporation or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the then trustees and their successors.

4. *And be it further enacted*, That a majority of the acting trustees of any such congregation may sue and be sued in their own names, in relation to the title, possession or enjoyment of such property without abatement by the death of any of the trustees, or the substitution of others; but the action or suit may notwithstanding be prosecuted to its final termination in the names of the trustees by or against whom the same was instituted, and all other proceedings had in relation thereto, in like manner as if such death or substitution had not occurred; *Provided, however*, that such trustees for the use of any religious congregation shall not hereafter take or hold at any one time any tract of land in the country exceeding in quantity thirty acres, or in any incorporated town exceeding two acres; nor shall such real property be held by them for any other use than as a place of public worship, religious or other instruction, burial ground and residence of their minister.

5. This act shall be in force from the passing thereof."

What further protection could be desired? Where are the "indiscriminate indifference and neglect," which are so much complained of in the petition? Are not two acres of ground in the town, and thirty acres in the country sufficient? I am happy to be able thus to vindicate the State from every suspicion of fostering anti-christian laws and usages. I wish also to add that the gentlemen greatly erred in saying that jockey clubs had corporate rights in Virginia.

Nor is the question which I shall discuss, whether the General As-

sembly shall grant to religious societies of any description such legal privileges as upon their individual application, may be judged safe and proper. Let each case be presented upon its own merits, let its objects be carefully enquired into, and let the Legislature act as shall seem right. The General Assembly possesses and exercises that power now. Never have I moved a finger to prevent any sister church from securing any immunity she may desire from the State. My motto has always been, *Non nostrum inter vos tantas componere lites.*

In the petition before you two such objects are sought. One is an act of incorporation for a Theological Seminary; the other a charter for a fund for the widows and orphans of deceased clergymen. Both of these appertain to one denomination. I shall say nothing in favor of granting them, at least until asked to do so. Should I ultroneously urge the granting of these prayers I should expect to hear the cry—

Non tali auxilio.

I shall certainly say nothing against granting them.

I am not unmindful that these preliminary remarks are protracted. All I have to say in excuse is, they are necessary. In felling a tree it is sometimes best to spend a few minutes in cutting away the undergrowth.

What then is the question? It is this: SHALL THE LEGISLATURE BY A GENERAL LAW CREATE AS MANY RELIGIOUS CORPORATIONS AS THERE ARE CONGREGATIONS AND RELIGIOUS SOCIETIES IN THE STATE? This is the question. This is the sole question, which I shall discuss. It is the *great* question presented in the petition before you. It asks for "a law authorizing the religious congregations to hold property, &c. It asks for a law "to enable them to hold and transmit property." It speaks more than once of "corporate rights." That this is what was intended to be sought may be learned from the Southern Churchman, of August 30, 1844, where a *general* law is emphatically spoken of. The Journals of the Episcopal Convention for a year or two past show that a *general* and comprehensive system of incorporation is contemplated.

Thus in the "Journal of the Convention" for 1844, p. 25, I find this record:

"Mr. Macfarland offered the following resolution, which was adopted:—

Resolved, That it is expedient to renew the application to the Legislature for an act authorizing religious, benevolent and literary societies and institutions to hold property given, or bequeathed to them," &c.

Here is a purpose expressed of applying for "*an act*," one single

act, one general indiscriminate law. It is also said that they will "*renew*" the application, clearly declaring that they had made it before.

So in the "Journal of the Convention" for 1845, p. 33, the committee appointed the previous year is "requested" "to continue" their efforts. I take it for granted that this proof is sufficient on this point.

SECTS IN VIRGINIA.

Now let us look to the condition of the Commonwealth. In Virginia we have Baptists, Episcopal Methodists, Presbyterians, Protestant Episcopalians, Protestant Methodists, Reformers, New School Presbyterians, Associate Presbyterians, German Reformed, German Lutherans, Mennonists, Friends, Winebrenarians, Universalists, Roman Catholics, Swedenborgians, and perhaps a few of other names. These constitute a large body of adult persons, probably not less in number than one hundred and sixty thousand with a large number of congregations, variously estimated from fifteen hundred to two thousand. The latter is probably not far from the truth. Besides these, there are amongst us several congregations of Jews, a few Fourierites, perhaps a number of infidels, possibly some atheists, and certainly a large number of persons, who make no profession of religion, and are supposed to have no preferences to any denomination. Without intending the slightest disrespect, and solely for the want of a better name I may call them Nothingarians. The sect of the Nothingarians is perhaps the largest in the Commonwealth. It has no creed, no churches, no discipline, but a very large number of members. It boasts of great antiquity. It was founded in the first century in Achaia by one Gallio, of whom it is said: "He cared for none of these things."

It is remarkable that in all I have seen and heard from persons favoring the petition before you, I have not noticed any provision of law proposed for any but *Christian* sects. The seed of Abraham, unbelievers in divine revelation, and the great mass of men indifferent to all forms of religion, seem not to have been thought of.

A great object of laws, fundamental and municipal, is to protect the weak against the strong, the few against the many. The reason is that the many in free governments, and the strong in all governments, can protect themselves. Are you to favor the strong sects among the Christians? By no means, say the petitioners; so say we all. Are you to give corporate powers to Romanists? Do the Protestants of this State desire to see the Papacy have such a power amongst us? Do Papists desire to see Protestantism well fenced in and well fed by corporate property? The Fourierites, and the infidels, and atheists would surely desire something. Is it best to enable *them* by law to

take, hold and transmit property? If you exalt one, or three or four influential denominations, will not the rest be oppressed? If the Legislature enter largely upon this work of granting corporate powers they must either do it blindly, or a large part of their time will be consumed in inquiries into the nature and merits of the religious opinions, and practices of the people of the state. And is any man prepared to submit his creed or his views of church government to the inquisition of a legislative committee? No, is the universal answer. Then, I say, the General Assembly must act indiscriminately, and treat good and bad, Protestant and Romanist, Jew and Gentile, infidel and atheist, all alike.

However evil the practice and corrupt the doctrines of many in the State, they are yet citizens, and so long as obedient to the laws they are entitled to every blessing or privilege which legislation can confer, in common with the most orthodox and pious.

FREEDOM, NOT TOLERATION.

Although I would not make a man an offender for a word, yet it seems to me unfortunate, that in the petition before you, the word "*toleration*" should have more than once found a place. I believe that under our government *toleration* of any sect or opinion is absolutely impossible. LIBERTY, unqualified and the very largest, is our birthright. No man holds any opinion on the subject of religion by permission of his fellow-men, acting in any capacity. The State does not, the State cannot, *tolerate* religion or irreligion, nor can it aid either, unless it erect itself into a Star Chamber, or a Court of High Commission, with an execrable Laud at its head to determine what *is* and what is *not* true religion and safe opinion. It is well said by one of the most accurate observers of human affairs, that "every power which calls in the aid of an ally stronger than itself perishes by the assistance it receives." If the State calls in religion as an ally stronger than herself, the church will swallow up the State. If the church calls in the State as an ally stronger than herself, she will be swallowed up by the State. At this time both are happily, to a great extent, independent, and in most respects unallied. A powerful State never grants privileges to the church without requiring, sooner or later, heavy payment. A State, nursing a church, has always been like a she-bear hugging a lamb. On this general subject I find in Tucker's Blackstone, vol. 1st, part 2d, p. 4 in the note, some sentiments expressed so forcibly that I beg leave to quote them. It does not diminish in my mind their force that they are derived from Paine, whose opinions on the subject of religion were indeed exceedingly corrupt, but whose services in prepar-

ing the public mind for the Independence of 1776, no well-informed man can doubt. I give the quotation, however, not as upon the authority of a name, but as containing truths so nearly self-evident to a Virginian, that I venture to predict gentlemen on the other side will not attempt to disprove the truth of one of them, although they may sneer at my quoting Tom Paine. My motto is: "Que m'importe d'où il soit pourvu qu' il se trouve utile." "If the things themselves are good, it signifies very little whose they are." Here is the quotation:

"Toleration is not the opposite of intolerance, but is the counterfeit of it. Both are despotisms. The one assumes to itself the right of withholding liberty of conscience, and the other of granting it. The one is the pope armed with fire and faggot, and the other is the pope selling or granting indulgences. The former is church and state, and the latter is church and traffic.

But toleration may be viewed in a much stronger light. Man worships not himself, but his Maker; and the liberty of conscience which he claims is not for the service of himself, but of his God. In this case, therefore, we must necessarily have the associated idea of two beings; the mortal, who renders the worship, and the immortal Being who is worshipped. Toleration, therefore, places itself not between man and man, nor between church and church, nor between one denomination of religion and another, but between God and man; between the being who worships and the being who is worshipped; and by the same act of assumed authority by which it tolerates man to pay his worship, it presumptuously and blasphemously sets itself up to tolerate the Almighty to receive it.

Were a bill brought into any parliament entitled: "An act to tolerate or grant liberty to the Almighty to receive the worship of a Jew or a Turk," or "to prohibit the Almighty from receiving it"—all men would startle and call it blasphemy. There would be an uproar. The presumption of toleration in religious matters would then present itself unmasked: but the presumption is not the less because the name of "Man" only appears to those laws, for the associated idea of the worshipper and worshipped cannot be separated."

IS THIS A CHRISTIAN COMMONWEALTH?

It has become customary in many quarters to speak and write of the governments of this country almost as if we had an established religion. In the petition before you I find the the expressions, a "Christian Commonwealth" and a "Christian State." If by these terms be meant, that the great majority of our people, who profess any religion, profess the christian religion, and that a great majority of the nation are

prejudiced in favor of the christian religion, then I do not object to such language. But if it be intended to create a belief that christians are or ought to be by our laws entitled to any civil, political or religious privileges except in common with Jews, Deists and Atheists, if there be any amongst us, then I utterly reject it. To me it is a source of unspeakable pleasure, that I live in a land, where I believe the rights of conscience are most solemnly guaranteed to every human being, however ill informed or perverted his conscience may be on spiritual affairs. In this equal unqualified liberty I rejoice, and I will rejoice. It was bought with the blood of our venerated fathers, nor was the price paid for it too high.

HISTORY OF VIRGINIA.

I would also observe that this proposition comes up at a remarkable time and under remarkable circumstances. When we look to Europe we can hardly see a State, which is not involved in serious difficulties on account of religion. Indeed the governments of most parts of the world have not yet snorted away the fumes of the indigested blood of myriads of victims, who have fallen under the evil power of the State to interfere in some way with religion. Even in our land I am not sure but there are still living men, who have suffered the rigors of imprisonment, or other mortifying disabilities on account of their religious opinions. I myself have seen a venerable minister of the Baptist church, who together with two of his brethren was imprisoned in the jail of Chesterfield, (not twenty miles from this spot,) and solely upon the ground that he had dared with freedom to tell the people that the blood of Jesus Christ cleanseth from all sin. As to the multitude of minor mortifying disabilities, under which men are frequently made to labor, I declare most solemnly, in the language of another, that, "I would sooner bring myself to put a man to immediate death, and so get rid of the man and his opinions at once, than to fret him with a feverish being, tainted with the jail distemper of a contagious servitude, to keep him above ground an animated mass of putrefaction, corrupted himself, and corrupting all about him." Or if his spirit be too stout, and his virtue made of stuff too stern to succumb to the natural influence of these degrading disabilities, then I solemnly declare I would sooner see him put to death in a solemn and decent manner, than to behold him from day to day harrassed, vexed, and tormented by the countless irritations of evil men, having power to fret him, but not magnanimity to let him alone. I say thus because I had rather die myself than live, for ever tormented by the myriads of flies, wasps and hornets, generated by any system of legislation, partial to the conscien-

cies of any particular class. The first article in my creed is: *There is a God.* The second is like unto it: *God alone is Lord of the conscience.* I would as soon think of blotting out the first as the second from the symbol of my faith.

That I have not exaggerated the state of things, existing in this Commonwealth previous to the events of 1776 is manifest to the memory of our old people, and is abundantly declared by record evidence as I shall show. Such a state of things has not escaped the notice of our most eminent jurists.

JUDGE ROANE.

I could mention no name among the long list of able judges, who have presided in our halls of justice, which would carry with it more weight than the name of SPENCER ROANE, of whom it is hard to say, whether his fame should rest most upon the natural strength and independence of his mind, the extent of his legal knowledge, his sterling integrity, or his fervent love of unqualified liberty. This eminent public servant as reported in 6th Call pp. 168, 169, (Turpin et al. v. Locket et al.) Speaking of the Revolution, says "that memorable event has tumbled to the ground the then *national* church together with its colleague the government: It has not tumbled to the ground, and I trust never will, the pure and excellent system of that church, considered as a society of christians; but that towering and powerful hierarchy, whose progress was not to be arrested, by *even* the mild and tolerant principles of the Episcopal persuasion: that overwhelming hierarchy, which levelled to the dust every vestige of religious liberty!"

"Let me not be supposed, sir, to denounce this hierarchy with too much severity. Is it not known to every sciolist in our laws, that *it* procured the enaction of a statute for *silencing*, and even *banishing* non-conforming ministers? Is it not known to every member of this court, that even in the dawn of our struggle against Britain, for *civil* liberty, many meek and pious teachers of the gospel were imprisoned, persecuted, and treated as criminals?"

"The only crime of these men was their worshipping God according to the dictates of their own consciences! There is not a gentleman old enough to know the fact, who has not seen ministers of the gospel of Christ, teaching their doctrines through the grated windows of a prison." He adds that there was then an "utter annihilation of every semblance of religious liberty."

GLEBE LANDS.

The case, in which the above sentiments are expressed, is the celebrated *Glebe* case—a case, which ought never to be forgotten by the

people of this Commonwealth—a case, in which an attempt was made to settle upon a particular denomination a large amount of landed property, which had been paid for out of the common fund created by the whole people of the State. Nor is it to be forgotten, that the attempt would have succeeded, had it not been for the sudden and lamented death of one of the judges on the night before this decision was to have been made. The case came by appeal to the Court of Appeals, consisting of five judges. Three of them were for sustaining the appeal, but the death of one of the three prevented him from giving his opinion. The Court was therefore equally divided; and the appeal consequently failing, the judgment of the lower court obtained.—Thus by an event unlooked for, and much lamented by good men, were the people of this State saved from the iniquitous and odious imposition threatened by the claims set up for the Glebes.

Our escape was if possible even narrower than this. When a Glebe case from that part of Virginia, which, had been ceded to the Federal Government, as a part of the District of Columbia came before the Supreme Court of the United States it was decided to the amazement of thousands that the Episcopal church was entitled to the Glebe.—See the case of Terrett and others *vs.* Taylor and others, 9. Cranch, pp. 43—55. In this case Chancellor Tucker says the Court gave an extra-judicial opinion respecting Glebes in Virginia.

I ask the committee, to allow me to read a few short, but impressive lessons from our past history. Dr. Baird in his work entitled "Religion in America," pp. 88, 89 speaks particularly of Virginia:

"During the governorship of Sir Thomas Dale, the London Company sent over to Virginia a set of "laws, divine, moral, and martial," being, apparently, the first fruits of Sir Thomes Smith's legislation; and from their Draconian character, they give us some idea of the notions entertained in those times of the ways whereby religion might be promoted by the civil power. They were so bad, it is true, as to be little, if at all enforced. In short, they soon fell into complete desuetude, and were disclaimed, at length, by the company, without whose sanction they seem to have been prepared and sent. Yet there is ample evidence to prove that they breathed very much the spirit of the times that produced them, and of the party in the church of England to which their author belonged—a spirit, which, thank God! has long since ceased to exist in that or any other portion of the church of Christ in that country.

The first of those laws that bears upon religion enjoins on the officers of the colony, of every description, to have a care that "the Almightie

God bee duly and daily served," that the people "heare sermons, that they themselves set a good example therein, and that they punish such as shall be often and wilfully absent, "according to martial law in the case provided."

The second law forbids, upon pain of death, speaking against the sacred Trinity, or any person of the same, or against the known articles of the christian faith.

The third law forbids blasphemy of God's holy name upon pain of death; and the use of all unlawful oaths, upon severe punishment for the first offence, the boring of the tongue with a bodkin for the second and death for the third.

The fourth law forbids speaking disrespectfully of the word of God, upon pain of death, as well as the treating of ministers of the gospel with disrespect; and enjoins the "holding of them in all reverent regard and dutiful entreatie," under penalty of being whipped three times, and of asking forgiveness in the assembly of the congregation three severall Saboth daies."

The fifth law enjoins upon all to attend morning and evening, every week-day, in the church for service, at the tolling of the bell, upon pain of losing their daily allowance for the first omission, to be whipped for the second, sent to the galleys for six months for the third. It also forbids all violation of the Sabbath by gaming, and commands the people to prepare themselves by private prayer for the proper attendance upon the public worship, forenoon and afternoon, upon pain of losing their week's allowance for the first omission, the same and a whipping for the second, and death for the third.

The sixth enjoins upon every minister within the colony to preach every Sabbath morning, and catechise in the afternoon; to have a service morning and evening every day, and preach on Wednesday; "to chuse unto him some of the most religious and better disposed" to maintain a sort of spiritual police, and to see that the church be kept in a good and decent state, and that he keep a register of births, deaths, baptisms, &c., "upon the burthen of a neglectfull conscience, and upon paine of losing their entertainement."

The seventh law commands "all who were then in the colony, or who shall thenceforth arrive, to repair to the minister, that he may know, by conference had, their religious knowledge; and if any be deficient, they are enjoined to go to him, at times which he shall appoint, to receive farther instruction, which, if they refuse to do, the governor, upon representation of the fact, shall order the delinquent to be whipped once for the first omission. twice for the second, and every day till

acknowledgment be made and forgiveness asked for the third, and also commands every man to answer, when catechised respecting his faith and knowledge upon the Sabbath, upon pain of the same peril."

Previously to the dissolution of the Company, in 1624, the Colonial Legislature passed a number of laws relating to the church; three of the most important were as follows:

1. That in every plantation where the people were wont to meet for the worship of God, there should be a house or room set apart for that purpose, and not converted to any temporal use whatsoever.

2. That whosoever should absent himself from divine service any Sunday, without an allowable excuse, should forfeit a pound of tobacco; and that he who absented himself a month, should forfeit fifty pounds of tobacco.

3. That there should be a uniformity in the church as near as might be, both in substance and circumstance, to the canons of the Church of England; and that all persons should yield a ready obedience to them upon pain of censure."

"One of the greatest evils of the Establishment we are speaking of, is to be found in the shameful acts of intolerance and oppression to which it led. Although the Quakers were in no instance put to death in Virginia, yet they were subjected to much persecution and annoyance, and were glad in many cases to escape into North Carolina. The Puritans, too, were much disliked, and severe laws were passed "to prevent the infection from reaching the country." Archbishop Laud's authority stood as high in Virginia as in England. An offender against that authority, of the name of Reek, was, in 1642, pilloried for two hours, with a label on his back setting forth his offence, then fined £50, and imprisoned during the pleasure of the governor." p. 98.

A CASE.

I find in Jefferson's Reports, pp. 96 and 97, in the case of "Goodwin et al. *vs.* Lunan"—confirmation of all this, with further light on the state of things in Virginia. "The plaintiffs were churchwardens and vestrymen of the upper parish, county of Nansemond, and filed libel in General Court as a Court of Ecclesiastical jurisdiction against the defendant charging that he was minister of the gospel of Christ, regularly ordained, according to the rites of the Church of England; that he was received to the (cure?) care of the said parish; that he was of evil fame and profligate manners; that he was much addicted to drunkenness, in so much as to be often drunk at church and unable to go through divine service, or to baptise or marry those who attended for those purposes: that he officiated in ridiculous apparel un-

becoming a priest; that he was a common disturber of the peace, and often quarrelling and fighting; that he was a common and profane swearer; * * * * that he neglected the parochial duties of performing divine service, preaching and administering the sacrament of the Lord's Supper; that he had declared he did not believe in the revealed religion of Christ, and cared not of what religion he was so he got the tobacco, nor what became of the flock so that he could get the fleece.

Wherefore the libellants prayed that the said Patrick Lunan might be corrected, punished and deprived, or otherwise that right and justice might be administered. The defendant pleaded to the jurisdiction of the court, and on that plea it was argued in October, 1771."

After argument, the court adjudged that they possessed ecclesiastical jurisdiction in general. But a re-hearing was granted.

The parts of this report omitted and marked * * * * I assure the Committee are not palliative. They are too bad to be read or even thought of.

Bishop Meade in his address to the Convention of his Diocese in May last testifies to the same point. Speaking of the Episcopal church in Virginia previous to the Revolution of 1776, he says, "that its spiritual condition was ever even tolerablygood * * * faithful history forbids us to believe." He also says: "That the ministers then in the colony were men of zeal can scarce be supposed, as a law was required enjoining it upon them to preach constantly every Sabbath and administer the sacrament at least twice every year." Again: "As to the unworthy and hireling clergy of the Colony there was no ecclesiastical discipline to correct or punish their irregularities and vices." Again: "That there was at this time" (the days of Whitefield and Davies) "not only defective preaching, but, as might be expected, most evil living among the clergy is evident from a petition of the clergy themselves to the Legislature," &c. He then speaks of the "Episcopal clergy losing more and more the favor of God and man." He says: "Had they been faithful shepherds they would not have deserted their flocks," as by his statement, 63 out of 91 did after the contest with England began. Again, speaking of the days of Bishop Madison and "for a long time before," he says: "It is a melancholy fact that many of them, [the clergy] had been addicted to the race-field, the card-table, the ball-room, the theatre—nay, more, to the drunken revel. One of them, about the very period of which I am speaking, was, and had been for years, the President of a Jockey Club. Another, after abandoning the ministry, fought a duel in sight of the very church in which the had performed the solemn offices of religion. Nothing was more

common even among the better portion of them, than to celebrate the holy ordinance of Baptism, not amidst the prayers of the congregation, but the festivities of the feast and the dance, the minister sometimes taking a full share in all that was going on." He speaks of many of the English clergy as having preached "a mere morality and not the glorious doctrines of grace." Again, speaking of non-Episcopalians in Virginia, he says: "Had not our fathers done religion and them some wrong? Were they not most sincere in their fear of us?" Speaking of the Revolution of 1776, and the downfall of the hierarchy, he says: "Many circumstances contributed to this event. The severities exercised towards some of the Dissenters in times past had embittered their minds against the declining establishment."—Journal of the Convention, 1845, pp. 13, 14, 15, 17, 18, 19.

Sir, men are still living who saw and felt, and wept over, and fought against this state of things. Is *this* a time for the Legislature of Virginia to commence a virtual establishment of religion in all its forms by *filling* the Commonwealth with religious corporations?

This movement is also remarkable if we consider the state of our laws.

On the 24th January, 1799, the Legislature of Virginia passed "an Act to repeal certain Acts, and to declare the construction of the Bill of Rights and Constitution concerning Religion."

1. Whereas the Constitution of the State of Virginia, hath pronounced the government of the King of England, to have been totally dissolved by the revolution; hath substituted in place of the Civil Government so dissolved, a new Civil Government; and hath in the Bill of Rights, excepted from the powers given to the substituted Government, the power of reviving any species of ecclesiastical or church-government, in lieu of that so dissolved, by referring the subject of religion to conscience: And whereas, the several acts presently recited, do admit the church established under the regal government, to have continued so, subsequently to the Constitution; have bestowed property upon that church; have asserted a legislative right to establish any religious sect; and have incorporated religious sects, all of which is inconsistent with the principles of the Constitution, and of religious freedom, and manifestly tends to the re-establishment of a national church: For prevention whereof,

2. *Be it enacted*, That the several laws, the titles whereof are as follows: "An Act for exempting the different societies of dissenters from contributing to the support and maintenance of the church as by law established, and its ministers, and for other purposes therein

mentioned"—"An Act, to repeal so much of the act, for the support of the clergy, and for the regular collecting and paying the parish levies, as relates to the payment of the salaries heretofore given to the clergy of the church of England"—"An Act for incorporating the Protestant, Episcopal church"—"An Act, to authorize the election of certain vestries"—"An Act, to repeal the act, for incorporating the Protestant Episcopal church, and for other purposes"—and "An Act for giving certain powers to the trustees of the property of the Protestant Episcopal church," be, and the same are hereby repealed, and declared to be void and of none effect. And it is further declared, that the law entitled, "An Act for establishing religious freedom," is a true exposition of the principles of the Bill of Rights and Constitution."—1. *Revised Code*, 1819, pp. 78, 79.

In the Assembly which passed this Act, besides other men of eminence, were Richard B. Lee, John Tazewell, George Mason, John Tyler, Sr., Wm. B. Giles, John Taylor, of Caroline, and James Madison—*nomina clara et venerabilia*—men who were not accustomed to send forth solemn declarations, much less to put them in the form of laws, without some degree of consideration. Yet these eminent public servants here put it on record, as their deliberate judgment, that "to incorporate religious sects is inconsistent with the principles of the Constitution, and of religious freedom, and *manifestly* tends to the re-establishment of a national church." Sir, I will not enter into a detailed argument to show that *that* is true which John Taylor, of *Caroline* and James Madison, and the Legislature of Virginia declared to be "*manifest;*" nor will I stop to answer the objection, that this opinion is expressed only in a preamble, especially when I see that preamble itself followed by an actual repeal of corporate powers previously granted to one denomination.

But we are told that the petitioners desire corporate powers not for themselves only, but for all Christian denominations; yea, more, for every congregation and religious society in the Commonwealth. I believe the ass is esteemed the most stupid of animals; yet I can hardly imagine that even he is so dull as not to prefer being ridden by *one* rather than by a *dozen*. Very far sooner would I see the Legislature of Virginia grant acts of incorporation to *any* sect that might ask it than to see a whole litter of incorporated churches brought forth at once. I cannot, however, indulge a wish so malignant towards any branch of the church of God as to say: "Let this one be incorporated." Such a grant of incorporation, if accepted, would blast the fairest prospects of any denomination for half a century.

We have in 2nd Revised Code, pp. 77, 78, a statutory provision, penned by the author of the Declaration of Independence, and regarded almost universally with the highest veneration, although it was enacted by an ordinary Legislature, and might be repealed at any time. I will not quote it. I will merely request the committee to consider its several clauses, and endeavor to catch its spirit, and act accordingly. I am happy to state that its most important provisions are now incorporated into the existing Constitution of Virginia, and so form a part of the fundamental law of the Commonwealth, thus, if I interpret them aright, forbidding the Legislature itself to change the policy of the State concerning religion.

CONVENTION OF 1829–30.

There is also a portion of the history of our present Constitution, to which I ask permission to call the attention of the Committee. In the Convention which formed that Constitution, as I learn from the published *Debates*, pp. 459–60, General Brodnax, a gentleman, a lawyer, a statesman, and a Christian, moved an amendment to a clause of the Constitution, in these words, viz: "Nor shall be so construed as to deprive the Legislature of the power of incorporating by law the trustees or directors of any Theological Seminary, or other religious society, or body of men created for charitable purposes, or the advancement of piety and learning, so as to protect them in the enjoyment of their property and immunities, in such case, and under such regulations, as the Legislature may deem expedient and proper. But the Legislature of this State, during all future time, shall possess the power to alter, remodel, or entirely repeal such charter, or act of incorporation, whenever they shall deem it expedient."

Although Gen. B. urged the adoption of this clause on the ground that it "went to modify and restrain, not to increase the evil" of corporations, yet after discussion, "it was promptly negatived, twelve only rising in its favor."

I leave to the Committee to judge what weight this scrap of history ought to have on their decision, only remarking, that when on the authority of Mr. Madison it was published to the world that the Convention which formed the Federal Constitution, had refused to grant to Congress the power of incorporating any institution, I remember it had great weight with many. I may further add, that I believe neither Madison, nor Monroe, nor Marshall, nor Randolph, nor Leigh, nor Johnson, nor Taylor, nor Tazewell, were of the twelve who voted for it.

Leaving this view of affairs, I ask your attention to the history of the power of taking and holding property granted to the church in different ages and countries. Up to the time of Constantine, Christianity had stood alone, or rather she had waded through oceans of fire and blood to a moral grandeur, which language can hardly describe. Even Dioclesian, who immediately preceded Constantine, was a bloody persecutor. But under Constantine Christianity was established, not indeed with a power to persecute other forms of religion, as is frequently and erroneously supposed, but Christians were exempted from persecution and made eligible to office; and to the churches was given the power of taking, holding and transmitting property. This is the first experiment ever made on the principle now sought to be introduced into the Legislation of Virginia. The result history has given. It teaches a lesson which ought to make the *world of mankind* wise, while the *world of nature stands.*

Successive generations are *undone* by refusing to listen to the voice of history. They vainly suppose that human nature has fundamentally changed. They forget that although the human *mind* may march, the human *heart*, unregenerate, remains a cold, selfish, covetous, cruel thing from age to age.

"Power," says Dr. Hawkes, an Episcopalian, "always passes slowly and silently, and without much notice, from the hands of the many to the few; and all history shows that ecclesiastical domination grows up by little and little. The overwhelming tyranny from which the Reformation freed the Protestant church, grew up by this *paulatim* process."—*Quoted in Coleman's Primitive Church*, p. 261.

Aye, this "*Paulatim*" process it is which does the mischief. Little by little men yield and yield, until at last nothing is left them but an inglorious servitude, perhaps, however, under the name of "privilege," "boon," or "right." We shall find in this discussion some curious things called rights.

One of the best writers of the age has said:

"The desire for liberty, unfortunately, is but a step from the desire for power. The church soon passed from one to the other. When she had established her independence, it was in accordance with the natural course of ambition that she should attempt to raise her spiritual authority above temporal authority. We must not, however, suppose that this claim had any other origin than the weaknesses of humanity; some of these are very profound, and it is of importance that

they should be known."—*Guizot's History of Civilization, pp.* 122, 123.

With these remarks in view I ask your attention to the history of this power in the Roman Empire. Speaking of the church under Constantine, Coleman says:

"The wealth of the laity was now made to flow in streams into the church. New expedients were devised to draw money from them. Constantine himself also contributed large sums to enrich the coffers of the church, which he also authorized, A. D. 321, to inherit property by will. This permission opened new sources of wealth to the clergy, while it presented equal incentives to their cupidity. With what address they employed their newly-acquired rights is apparent from the fact stated by Planck, "that in the space of ten years every man at his decease, left a legacy to the church; and within fifty years the clergy, in the several provinces, under the color of the church, held in their possession *one-tenth part* of the entire property of the province. By the end of the fourth century, the emperors themselves were obliged to interpose to check the accumulation of these immense revenues: a measure which Jerome said he could not regret, but he could only regret that his brethren had made it necessary. Many other expedients were attempted to check this insatiable cupidity, but they only aggravated the evil which they were intended to relieve."—*Coleman's Primitive Church*, pp. 284, 285.

Milner says:

"It were to be wished, that there had been as much zeal at this time to support the doctrines and realize the power of the cross, as there was to honor its formalities. But this was far from being the case.

For neither in Constantine, nor in his favorite bishops, nor in the general appearance of the church, can we see much of the spirit of godliness. Pompous apparatus, augmented superstitions, and unmeaning forms of piety, much show and little substance appears. This is the impression, which the account given by Eusebius has left on my mind.

If we look at the external appearance of Christianity, nothing can be more splendid. An emperor, full of zeal for the propagation of the only divine religion by edicts, restores every thing to the church of which it had been deprived, indemnifies those who had suffered, honors the pastors exceedingly, recommends the governors of provinces to promote the gospel, and though he will neither oblige them nor any others to profess it, yet he forbids them to make use of the sacrifices commonly made by prefects, he erects churches exceedingly sumptuous and ornamental, with distinctions of the parts corresponding in

some measure to those in Solomon's Temple, discovers with much zeal the sepulchre of Christ at Jerusalem, real or pretended, and honors it with a most expensive sacred edifice. His mother Helena fills the whole Roman world with her munificent acts in support of religion, and after the erection of churches and travelling from place to place to evidence her zeal dies before her son, aged eighty years. Nor is the Christian cause neglected even out of the bounds of the Roman empire. Constantine zealously pleads in a letter to Sapor, king of Persia, for the Christians of his dominions, he destroys idol temples, prohibits impious pagan rites, puts an end to the savage fights of gladiators, stands up with respectful silence to hear the sermon of Eusebius, bishop of Cæsarea, the historian, furnishes him with the volumes of the Scriptures for the use of the churches, orders the observation of the festivals of the martyrs, has prayers and reading of the Scripture at his court, dedicates churches with great solemnity, makes christian orations himself, one of which of a considerable length is preserved by the historian, his favorite bishop, directs the sacred observation of the Lord's day, to which he adds that of Friday also, the day of Christ's crucifixion, and teaches the soldiers of his army to pray by a short form made for their use. * * * * * * *

But the great defectiveness of doctrine failed not to influence the practice as usual. External piety flourished, monastic societies in particular places were also growing; but faith, love, heavenly-mindedness, appear very rare; yet among the poor and obscure Christians, I hope there was far more godliness than could be seen at courts, and among bishops and persons of eminence. The doctrine of real conversion was very much lost, or external baptism was placed in its stead: and the true doctrine of justification by faith, and the true practical use of a crucified Savior for troubled consciences, were scarce to be seen at this time. There was much outward religion, but this could not make men saints in heart and life. The worst part of the character of Constantine is, that as he grew older, he grew more culpable, oppressive in his own family, oppressive to the government, oppressive by eastern superfluous magnificence, and the facts to be displayed will shew how little true humility and charity were now known in the christian world, while superstition and self-righteousness were making vigorous shoots, and the real gospel of Christ was hidden from men who professed it." —*Milner's Church History, Vol. II. pp.* 56—59.

"And at length a bold and open assault was made against the Deity of the Son of God, and persecution was stirred up against Christians, by those who wore the christian name. The people of God were ex-

ercised, refined, and improved, while the christian world at large was torn 'in pieces with violence, intrigue, and scandalous animosities, to the grief of all who loved the Son of God, and walked in his ways in godly simplicity."—*Ib. p.* 61.

This testimony comes from an eminent writer and minister of the church of England, and is the more entitled to weight, because the author has turned aside from the proper work of a historian at this period of history to give us a formal and labored argument in favor of Church Establishments. As an offset to Milner's defence of church establishments, I would recommend an examination of Dr. Short's History of the Church of England, especially Chapter XVIII.

Mosheim, the "Illustrious," as he has often been called, speaking of the same period, says :

"No sooner had Constantine, the Great, abolished the superstitions of his ancestors, than magnificent churches were erected for the Christians, which were richly adorned with pictures and images, and bore a striking resemblance of the pagan temples, both in their outward and inward form. Of these churches some were built over the tombs of martyrs, and were frequented only at stated times, while others were set apart for the ordinary assemblies of Christians in divine worship. The former were called martyria, from the places where they were erected ; and the latter, tituli. Both of them were consecrated with great pomp, and with certain rites, borrowed mostly from the ancient laws of the Roman pontiffs.

"But our wonder will not cease here : it will rather be augmented when we learn, that at this time it was looked upon as an essential part of religion to have in every country a multitude of churches ; and here we must look for the true origin of what is called the *right of patronage*, which was introduced among Christians with no other view than to encourage the opulent to erect a great number of churches, by giving them the privilege of appointing the ministers that were to officiate in them. This was a new instance of that servile imitation of the ancient superstitions which reigned at this time ; for it was a very common notion among the people of old, that nations and provinces were happy and free from danger, in proportion to the number of fanes and temples which they consecrated to the worship of gods and heroes, whose protection and succor could not fail, as it was thought, to be shed abundantly upon those who worshipped them with such zeal and honored them with so many marks of veneration and respect. The Christians unhappily contracted the same erroneous way of thinking. The greater the number of temples was which they erected in honor

of Christ, and his chosen friends and followers, the more sanguine did their expectations grow of powerful succors from them, and of a peculiar interest in the divine protection. They were so weak as to imagine that God, Christ, and celestial intelligences were delighted with those marks and testimonies of respect, which captivate the hearts of wretched mortals."—*Mosheim, Vol. I. pp.* 302, 303.

The effects of this system were in two centuries prodigious. For proof, see history. Guizot gives us the following specimens of the state of things at the beginning of the fifth century:

"Cod. Just., L. I., tit. IV., *De Episcopali audientia* § 26. With regard to the yearly affairs of the cities, (whether as respects the ordinary city revenues, the funds arising from the city estates, from legacies or particular gifts, or from any other source; whether as respects the management of the public works, of the magazines of provisions, of the aqueducts, of the maintenance of the public baths, the city gates, of the building of walls or towers, the repairing of bridges and roads, or of any landsuit in which the city may be engaged on account of public or private interests,) we ordain as follows: The right reverend bishop, and three men of good report, from among the chiefs of the city, shall assemble together every year; they shall examine the works done; they shall take care that those who conduct, or have conducted them, measure them correctly, give a true account of them, and cause it to be seen that they have fulfilled their contracts, whether in the care of the public monuments, in the moneys expended in provisions and the public baths, of all that is expended for the repairs of the roads, aqueducts, and all other matters.

Ibid., § 30. With respect to the guardianship of youth, of the first and second age, and of all those to whom the law gives *curators*, if their fortune is not more than 5,000 *aurei*, we ordain that the nomination of the president of the province should not be waited for, on account of the great expense it would occasion, especially if the president should not reside in the city, in which it becomes necessary to provide for the guardianship. The nomination of the curators or tutors shall, in this case, be made by the magistrate of the city * * * in concert with the right reverend bishop and other persons invested with public authority, if more than one should reside in the city.

Ibid., L. I., tit. V., De Defensoribus, § 8. We desire the defenders of cities, well instructed in the holy mysteries of the orthodox faith, should be chosen and instituted into their office by the reverend bishops, the clerks, notables, proprietors, and the curiales. With regard to their installation, it must be committed to the glorious power of the

prefects of the prætorium, in order that their authority should have all the stability and weight which the letters of admission granted by his magnificence are likely to give."—*Guizot on Civilization, p.* 52.

Turning aside from this first disastrous and minatory experiment, let us look at the operation of religious corporations in other countries, and especially those in the west of Europe, to whose people and institutions, ours are most nearly assimilated. First look at

FRANCE.

According to "Le Cabinet du Roi," in France, before the Revolution the property of the church consisted of 180,000 fiefs, of which 83,000 had superior courts, 249,000 farms, 1,700,000 acres of vineyard, besides 400,000 acres, from which the ecclesiastics received one-third or one-fourth of the wine, 600,000 acres of unoccupied land, 245,000 water-wheels in flour and paper-mills, iron works, &c., 1,800,000 acres of woods, 1,400,000 acres of pasturage. The greater part of the soil of the whole of France was also subject to the title of the clergy; and there was not a patch of ground on which there was not a mortgage, rent or religious foundation, or an annual tax of from 5, 10 to 50 sols for a mass, burning lamps, &c., &c.

Allison, in his History of Europe, Vol. I. pp. 51, 52, in a note says, upon the authority of Neckar: "The total revenues of the church derived from tithes were 130,000,000 francs; of which only 42,000,000 were in the hands of the parochial clergy. The number of ecclesiastics was 80,000." (Sieyes is his authority.) He adds: "but this revenue, large as it was, was inconsiderable compared to the extent of the territorial possessions of this body, which embraced nearly *a half* of the whole land of France." For this assertion he quotes Rivarol, 93, and De Stael, I. 13. He adds: "The nobles and the clergy possessed two-thirds of the whole estates of the kingdom; and the other third was in the hands of the Tiers Etat, upon whom fell the greater proportion of the burdens of the state;" and for this assertion he quotes Rivarol 93, 94, and De Stael. I. 44, 198. In the text of his work he says: "Within the bosom of the church and in all who fell within the sphere of its influence, the seeds of deep-rooted discontent were to be found. This arose from the invidious exclusion of all persons of plebeian birth from the dignities and emoluments of the ecclesiastical establishment. In extraordinary cases, indeed, the force of talent may have procured elevation, without the advantages of blood: but, generally speaking, the dignitaries of the church were composed of the same class as the marshals or princes of the empire. While the bishops and elevated clergy were rolling in wealth, or glit-

tering in the sunshine of royal favor, the humbler clergy, to whom the whole practical duties of Christianity were devolved, toiled in virtuous obscurity, hardly elevated either in rank or comfort above the peasantry who composed their flocks. The simple piety and unostentatious usefulness of these rural priests, while it endeared them to their parishioners, formed a striking contrast to the luxurious habits and dissipated lives of the high-born dignitaries of the church. Their enormous wealth excited the envy both of their own establishment and of the lower classes of the people, while the general idleness in which they passed their lives afforded no possibility of justifying the scandalous inequality of their fortunes. Hence the universal indignation in 1789 at the vices and corruption of the church, and the facility with which, in the very commencement of the Revolution, their property was sacrificed to relieve the embarrassments of the finances."

Were it requisite a world of proof to the same effect might be produced. But there is no gentleman before the Committee, who will have the temerity to deny the enormous abuses of church property and church power in France, nor to express even a doubt as to its influence in bringing about that terrific explosion, which has scattered its lava over Europe, and its ashes over the world.

CHANCELLOR TUCKER.

Judge Henry St. George Tucker in his 'Opinion,' as Chancellor, "in the case of Selden and others against the Overseers of the Poor of Loudoun and another," says: (p. 16,) "The vast domains of the clergy, acquired in the lapse of centuries, by the Catholic establishment of France, are known to us all. There seems to be little reason to doubt that from this fatal source, among others, a revolution sprung, which deluged the loveliest country of Europe in blood; and in its horrible progress, spread desolation over adjoining states, and shook the civilized world to its very centre. But it may be said "that this was anti-christ," and that it is not fair to attribute to the Protestant religion the errors which they had been forward to denounce in the practices of popery. Look then across the channel to Protestant England, and there we shall see, notwithstanding every legislative precaution, a church establishment possessed of overgrown wealth, less devoted to the cause of genuine religion than to pamper the luxury and indolence of the high dignitaries of the church."

ENGLAND.

This introduces us to England, of whose Constitution I am free to say, that, with one exception, (our own,) it is the best in the world.

At an early period, (we need not stop to enquire when,) the power of taking, holding, and transmitting property, was granted to the church. From that time to the present, incalculable wrongs to private individuals, and inestimable dangers to the State have frequently arisen from this source. The statute books are covered over with evidence of this truth. Thus Blackstone (Book 1st, ch. xviii. Vol. I. pp. 478, 479,) says: "We before observed that it was incident to every corporation to have a capacity to purchase lands for themselves and successors; and this is regularly true at the common law. But they are excepted out of the statute of wills, so that no devise of lands to a corporation by will is good; except for charitable uses, by statute 43, Eliz. ch. iv. which exception is again greatly narrowed by the statute 9 George II. ch. xxxvi. And also, by a great variety of statutes, their privilege even of purchasing from any living grantor is much abridged: so that now a corporation, either ecclesiastical or lay, must have a license from the king to purchase before they can exert that capacity, which is vested in them by the common law; nor is even this in all cases sufficient. These statutes are generally called the statutes of mortmain, all purchases made by corporate bodies being said to be purchases in mortmain, in *mortua manu;* for the reason of which appellation Sir Edward Coke offers many conjectures; but there is one, which seems more probable than any that he has given us; viz. that these purchases being usually made by ecclesiastical bodies, the members of which (being professed) were reckoned dead persons in law, land therefore, holden by them, might with great propriety be said to be held in *mortua manu.*"

Mortmain, according to Angel & Ames on Cor. p. 90, means "the *dead clutch* of ecclesiastical corporations."

So also in Book IV, ch. viii, Vol. iv. pp. 108, 109, Blackstone says: "Another engine set on foot, or at least greatly improved, by the court of Rome, was a masterpiece of papal policy. Not content with the ample provision of tithes, which the law of the land had given to the parochial clergy, they endeavored to grasp at the lands and inheritances of the kingdom, and (had not the legislature withstood them) would by this time have probably been masters of every foot of ground in the kingdom. To this end they introduced the monks of the Benedictine and other rules, men of sour and austere religion, separated from the world and its concerns by a vow of perpetual celibacy, yet fascinating the minds of the people by pretences to extraordinary sanctity, while all their aim was to aggrandize the power and extend the influence of their grand superior, the pope. And as, in those times of civil tumult,

great rapines and violence were daily committed by overgrown lords and their adherents, they were taught to believe, that founding a monastery a little before their deaths would atone for a life of incontinence, disorder, and bloodshed. Hence innumerable abbeys and religious houses were built within a century after the conquest, and endowed, not only with the tithes of parishes, which were ravished from the secular clergy, but also with lands, manors, lordships, and extensive baronies. And the doctrine inculcated was, that whatever was so given to, or purchased by, the monks or friars, was consecrated to God himself; and that to alienate or take it away was no less than the sin of sacrilege."

Indeed Magna Carta itself "established the testamentary power of the subject over part of his personal estate, the rest being distributed amongst his wife and children," thus arresting the power of disinheriting a man's own household. See Blackstone, Book IV, ch. xxxiii, Vol. iv, p. 424.

We find Edward the First (the English Justinian,) attempting to arrest this evil "by obliging the ordinary, to whom all the goods of intestates belonged, to discharge the debts of the deceased." "He also effectually closed the great gulph, in which all the landed property of the kingdom was in danger of being swallowed by his reiterated statutes of mortmain; most admirably adapted to meet the frauds that had then been devised, though afterwards contrived to be evaded by the invention of uses." See Blackstone, Book IV, ch. xxxiii. pp. 425, 426.

This brings us to the consideration of the Statute 43 Elizabeth, concerning charitable uses, which statute, like those of mortmain, was interpreted by the Courts under the influence of the maxim, *summa est ratio quæ pro religione facit*, and led, as many cases show, to innumerable abuses, until it was further limited by the statute 9 Geo. II. Yet this celebrated statute (43 Eliz.) pronounces a superstitious use "to be where lands, tenements, rents, goods, or chattels are given, secured, or appointed, for and towards the maintenance of a priest or chaplain to say mass; for the maintenance of a priest, or other man, to pray for the soul of any dead man, in such a church or elsewhere; to have or maintain perpetual obits, lamps, torches, &c. to be used at certain times, to help to save the souls of men out of purgatory; these, and such like uses, are declared to be superstitious, to which the king, by force of several statutes, and as the head of the church and state, and entrusted by the common law, to see that nothing is done in maintenance or propagation of a false religion, is entitled, so as to direct and appoint all such uses to such as are truly charitable." 1 Bacon's Abridgement, p. 581.

Can the Legislature of Virginia put any such check as this to their own grants? Is it competent to grant power to take and hold funds to encourage the saying of prayers for the living, and not for the dead? If so, where is such competency declared? If you begin to grant, you *must* grant indiscriminately to Protestants and Romanists.

It is curious, yea more, it is instructive, to note the decisions under the statute of Elizabeth. I will cite a few of them. Here is one:

"*A*, being a beneficed clergyman, devised 600£ to Mr. Baxter, to be distributed by him among sixty pious ejected ministers, and added, that he did not give it to them for the sake of their non-conformity, but because he knew many of them to be pious and good men, and in great want; he also gave Mr. Baxter 20£, and 20£ to be laid out in a book of his, entitled, Baxter's Call to the Unconverted; and this was holden a superstitious use, which though void, yet the charity is good, and shall be applied *in eodem genere;* and it was decreed for the maintenance of a chaplain in Chelsea college. Ib. 582.

What a beautifully tangled hank our courts would have to unravel in the application of the whole doctrine of *cy pres*, were you to go into this business, as the petition proposes. To circulate Baxter's Call, yea to feed sixty hungry and eminent servants of God, (the best men of their day,) was a piece of superstition. Therefore, the money must go towards supporting a man of truckling servility, a Chelsea chaplain.

The above decision was made in the days of Richard Baxter, by North, Lord Keeper, and was not reversed by the Lords Commissioners until 1 W. & M. by which time I suppose most of the sixty pious ministers had gone to their "Everlasting Rest."

I will give another case:

"*A*, by will, charged his estate with an annual sum for the maintenance of Scotchmen in the university of Oxon, to be sent into Scotland, to propagate the doctrine of the church of England there; and presbyteries being settled in Scotland by act of parliament, the question was, Whether this devise should be void, and so fall into the estate and go to the heir, or should be applied *cy pres?* But the matter doth not appear by the report to have been determined."—*Ib.*

It seems then that the Act of settlement or something else has thrown the English Courts into doubt whether poor benighted Scotland is not to be left wholly unillumined by the great lights from Oxford. Possibly some decision may have been made in later times, so that ere now the Oxford Doctors (the Tractarians) are able to shed a little light over their Northern neighbors.

Here are some more decisions under this statute.

"In the case of an individual, if an estate be devised to such person as the executor shall name, and no executor is appointed, or one being appointed dies in the testator's life time, and no one is appointed in his place, the bequest amounts to nothing. Yet such bequest to charity would be good, and the Court of Chancery would in such case assume the office of executor. So, if a legacy be given to trustees to distribute in charity, and they die in the testator's life time, although the legacy is lapsed at law, (and if they had taken to their own use, it would have been gone forever,) yet it will be enforced in equity. Again, although in carrying into execution a bequest to an individual, the mode in which the legacy is to take effect, must be of the substance of the legacy; yet where the legacy is to charity, the Court will consider charity as the substance; and in such cases, and in such cases only, if the mode pointed out fail, it will provide another mode, by which the charity may take, but by which no other than charitable legatees can take. A still stronger case is, that if the testator has expressed an absolute intention to give a legacy to charitable purposes, but has left uncertain, or to some future act, the mode by which it is to be carried into effect, then the Court of Chancery, if no mode is pointed out, will of itself supply the defect, and enforce the charity. Therefore, it has been held, that if a man devises a sum of money to such charitable uses as he shall direct, by a codicil annexed to his will, or by a note in writing, and afterwards leaves no direction by note or codicil, the Court of Chancery will dispose of it to such charitable purposes as it thinks fit. So, if a testator bequeath a sum for such a school as he should appoint, and he appoints none, the Court of Chancery may apply it for what school it pleases. The doctrine has been pressed yet farther; and it has been established, that if the bequest indicate a charitable intention, but the object to which it is to be applied, is against the policy of the law, the Court will lay hold of the charitable intention, and execute it for the purpose of some charity, agreeable to the law, in the room of that contrary to it. Thus a sum of money bequeathed to found a Jew's synagogue, has been taken by the Court and judicially transferred to the benefit of a foundling hospital!! And a bequest for the education of poor children in the Roman Catholic faith has been decreed in Chancery to be disposed of by the King at his pleasure, under his sign manual."—*Appendix to 4 Wheaton's Reports, pp.* 10, 11.

Though the statute of Henry VIII. of wills, did not allow of devises of land to corporations to be good, yet such devises to corpora-

tions for charitable uses, were held good, as appointments under the statute of Elizabeth. Lord Chancellor Cowper, in a case where he was called upon to declare a charitable bequest valid, notwithstanding the will was not executed according to the statute of frauds, and these cases were cited, observed, "I shall be very loth to break in upon the statute of frauds and perjuries in this case, *as there are no instances where men are so easily imposed upon, as at the time of their dying, under the pretence of charity.*" "It is true, the charity of judges has carried several cases on the statute of Elizabeth great lengths; and this occasioned the distinction between operating by will and by appointment, which surely the makers of that statute never contemplated."—*Ib. p.* 14.

I ask the Committee also to examine the case of *the Attorney General vs. the Earl of Clarendon*, given in 17 Vesey.

From all these cases and views one thing must be apparent, that if the act of charitable uses, with all its guards against superstition, produced such monstrous results in the English Courts, where the Judiciary is so enlightened, we in Virginia would be in a bad condition for settling all the cases which would soon arise under this beautiful doctrine of *cy pres*. A sum of money left to circulate Baxter's Call would, I suppose, be decreed to give some Quoit Club a Saturday's dinner. Never did the founders of our government, and the framers of our laws do a wiser thing than to refuse admission into our code to the statute 43 Elizabeth, and thus send the doctrine of *cy pres* and all its concomitants to seek an abode elsewhere.*

BISHOP BURNET.

I wish to bring another witness on the stand. I think there will be no exception made to his competency or credibility by gentlemen on the other side.

Bishop Burnet, (Vol. I. part 1, Book 3, p. 303, Hist. Reform.,) speaking of the efforts to gain money to superstitious uses, and especially by means of the fiction of *purgatory* says: "They persuaded all people, that the souls departed went generally thither: few were so holy as to go straight to heaven; and few so bad as to be cast to hell. The people were made believe that the saying of masses for their souls gave them great relief in torments, and did at length deliver them out of them. This being generally received, it was thought by all a piece of piety to their parents, and of necessary care for themselves and their families, to give some part of their estates towards the enriching of those houses, for having a mass said every day for the souls of their ancestors, and for their own, after their death. And this did

*The statute 43 Elizabeth was repealed in Virginia in 1792.

so spread, that if some laws had not restrained their profuseness, the greater part of all the estates in England had been given to these houses. But the statutes of mortmain were not very effectual restraints; for what king soever had refused to grant a mortmain was sure to have an uneasy reign ever after."

Again, p. 490, he says: "The abbots had possessed themselves of the best seats and the greatest wealth of the nation; and, by a profuse superstition, almost the one-half of the kingdom fell into the hands of the churchmen. The bishops looked more after the affairs of the state, than the concerns of the church; and were resolved to maintain by their cruelty what their predecessors had acquired by fraud and impostures."

And in Part II, Book I, Vol. II, p. 38, he says that the churches which belonged to the abbeys, "were in value above the half of England." And p. 458, he tells us that in the days of Bloody Mary, "the statutes of mortmain were repealed for twenty years to come."

No doubt this bitter persecutor and her despicable minions thought twenty years would be long enough to recover the best part of what they had lost in the days of Henry VIII. and Edward VI. So says Burnet in the 29th page of the Introduction to Vol. III.

Some may, however, say that all this state of things in England has long since passed by. Let such look into the journals of the day, and their error will be corrected. A late number of the *London Patriot* contains the following:

"At a recent meeting in Ireland, the following authentic statement was made by the Chairman. He begged to be permitted to read the following document, which had reference to the amount of property left by the bishops of the Protestant church:—

Fowler, Archbishop of Dublin, - -	£150.000
Beresford, Archbishop of Tuam, - -	250,000
Agar, Archbishop of Cashel, - - -	400,000
Stopford, Bishop of Cork, - - -	25,000
Percy, Bishop of Dromore, - - -	40,000
Cleaver, Bishop of Ferns, - - -	50,000
Bernard, Bishop of Limerick, - -	60,000
Porter, Bishop of Clogher, - - -	250,000
Hawkins, Bishop of Raphoe, - -	25,000
Knox, Bishop of Clogher, - - -	250,000
Stuart, Archbishop of Armah, - -	300,000
Total,	£1,875,000

And these men call themselves the successors of the twelve poor fishermen of Galilee!

The following statement is taken from the *Eclectic Review*:

"The Canterbury chapter, consisting of a dozen canons, enjoys about £15,000 per annum; at Durham the same apostolic number share about £30,000 a year. London is nearly the same. Westminster and Windsor come very close to £20,000 a year each. The Warden and ten Winchester fellows share about £10,500 for positively doing nothing. Not a sermon can be extracted from one of them that we are aware of. The entire income of our cathedral and collegiate bodies stands in the parliamentary report at £284,241, exclusive of fines, leases, residences, and the like; which, as is well known, and was demonstrated in the House of Commons by Lord Monteagle, would add another £150,000 of annual revenue to the amount by a fair change of leaseholds into freeholds. It is not too much therefore to take the gross sum, comprehending within it about sixty sinecure rectories at 550 representing a capital of about eighteen millions sterling, at the present prices of landed property."

Does any man wish to see such a state of things in this land? Even to contemplate it as possible a thousand years hence is revolting to our best feelings. Surely, then, you will not render it certain, nor even probable, by a wholesale grant of charters. Who, that knows the history of manners in England for the last hundred years, can be ignorant of the fact that highly salaried clergymen, and, by their permission, their sons have often figured in fox-hunts and steeple-chases, to the great annoyance of the humble laborer, whose crops they have injured and exposed?

HOW THIS THING GREW.

The question arises, how was all this property of the English establishment acquired? The answer is given by Judge Tucker in the opinion already quoted. He says: "The evil has not sprung from the particular creeds, or the peculiarities of confession of faith; it grows out of the very nature of the thing. The church, while it is continually acquiring from the liberality of the pious, or the fears of the timid, or the credulity of the ignorant, never can part with any thing; and thus, like those sustaining powers in mechanics, which retain whatever they once have gained, it advances with a step that never tires, and that never retrogrades. The natural cupidity of the human heart is watched by the devotee himself, with the less jealousy in his pursuit after acquisitions for the church, since he flatters himself that it is purified from the dross of selfishness, and is sanctified by the holy objects

of his ambition. Thus it is, that, however humble in its beginnings, a church establishment must gather strength in its progress.

> Parva metu primo; mox sese attollit in auras
> Ingrediturque solo, et caput inter nubila condit."

In other words it was by the "*paulatim* process," that all this property and power have been accumulated through the course of many centuries. When Apelles was asked why he took so much pains with a piece of painting, his answer was, "I paint for eternity."

His fame and his saying have come down to us. When you legislate I hope you will remember that you are legislating for ages as late as shall hear of the fame of Apelles.

If you go into this business, I hope it will not be until the legislature shall have appointed a large committee, learned in the history of law, who shall present you a scheme guarding in every point the liberties of the present and coming generations—a committee wiser than all the world that has gone before them, for none have been wise enough hitherto to prevent the atrocious abuses just alluded to.

MEXICO.

Some may, however, say that these examples are drawn from monarchical governments, and from the old world. That is true. Let us come to the new world, and to a sister republic. I refer to Mexico. Like ourselves, she cast off, by a successful revolution, the authority of the mother country. She established the Constitution of 1824. Under the most sacred forms of law, decree, and grant, she invited the people of the United States to settle in at least a portion of her territory, guaranteeing to them a federative system, free toleration of the Protestant religion, the inviolability of private property, and a republican form of government. The nation, though long oppressed and debased, was beginning to rise. In provincial assemblies, and in the national congress, men were learning, that they had rights. They even ventured to *think* for themselves, and to maintain their opinions with argument. Some began to think, that if they could judge for themselves in affairs of government, and international law, possibly they might learn the will of their Maker from his holy word, without the infallible guidance of a priest. In short, the spirit of freedom was growing among the people. The Church dignitaries took the alarm, and enquired, "whereunto will this thing grow?" They looked about for a tool of their evil designs. A man supposed to be of the right stamp was found. His name was D. Antonio Lopez de Santa Anna. Under the

plan of *Toluca*, which bears date 29th May, 1835, the Constitution is destroyed, and a Central Government is to be established. The Priesthood is again triumphant. The car of Liberty is rolled back, and chained to the altar of these miscreants. Santa Anna is at the head of affairs, the tool of bigotry, despotism and cruelty. But things had gone too far to allow such a revolution without at least a passive resistance in some quarter. Therefore, war must be waged, and war costs money. True to their instincts, the *priests* came forth, with the Arch Bishop of Mexico at their head, and pledged the needful sum. Two Bishops gave one million of dollars.

Thus the business of enslaving mankind to the hierarchy went bravely on, until a certain San Jacinto affair checked the progress of this chief and tool of tyrants. But it checked it only as to one of the States, (Texas,) and that now righteously and lawfully freed from Mexican misrule. The rest are caught in the trap of these priests.

To give some idea of the splendor of this church property in Mexico, allow me to present one item:

In the Cathedral of *Puebla de los Angeles* hangs a chandelier of massive gold and silver, not of *ounces* avoirdupois, but whole *tons* in weight, collected under the viceroys from the various tributary mines. On the right hand side of the altar stands a carved figure of the Virgin dressed in beautiful embossed satin—executed by the nuns of the place. Around her neck is suspended a row of pearls, of precious value, a coronet of pure gold encircles her brow, and her waist is bound with a zone of pure diamonds and enormous brilliants. The candelabras in the cathedral are of silver and gold, too massive to be raised even by the strongest hand; and the Host is one mass of splendid jewels of the richest kind. In the Mexican cathedral there is a railing of exquisite workmanship, five feet in height, and two hundred feet in length, of gold and silver, on which stands a figure of the Virgin of Remedois, with three petticoats—one of pearls, one of emeralds, one of diamonds: the figure alone is valued at three millions of dollars. In the church of Gaudeloupe there are still richer and more splendid articles; and in that of Loretto they have figures representing the Last Supper, before whom are placed piles of gold and silver plate, to represent the simplicity of that event. It is the same in all churches and cathedrals in Mexico. The starving *Lepero* kneels before a figure of the Virgin, worth three millions, yet would die of want before he would allow himself to touch one of the brilliants in her robes, worth to him a fortune. About a hundred millions of dollars are thus locked up in church ornaments, while nothing is laid out in public education, roads, canals, public improvements, and true national glory.

MORA.

I hold in my hand a volume of a work by an eminent Mexican, who for many years has resided in Paris. His work is in 2 Vols. 8 vo. The title page reads thus: "Obras Sueltas, (Loose Leaves,) de Jose Maria Luis Mora, Ciudadano Mexicano. Paris, 1837." On pages 372 and 373, Vol. I, he gives extended tables of the Church Property up to the year 1832. According to him the total annual nett income of the hierarchy is $7,456,593, which invested at the rate of 5 per cent. per annum, corresponds to a capital of $149,131,860. The value of the unproductive property, vases, images, pearls, precious stones, &c., &c., is $30,031,894. This is exclusive of Libraries of Convents, &c. Thus the whole church property of Mexico is equal to $179,163,754.

Let it be remembered, Sir, that this view is given by a Mexican, a Patriot, a papist, a man, who desires to see the Romish Church prosper in that country, a man, who in the same work has given a "*Presupuesto*," or estimate of what he was willing to allow for the support of the Clergy in Mexico, amounting to $4,889,200 per annum, and corresponding to a capital, at 5 per cent., of $97,784,000; and which is contrasted with the present amount, viz: $7,456,593 per annum, or a capital, productive and unproductive, of $179,163,754.

In these tables, so long as they correspond with the facts in the case, the doom of Mexican liberty is written.

OUR COUNTRY.

Leaving other countries, let us come to our own. Have we no warnings from corporations of overgrown wealth in our own land? Is there not already a great accumulation of wealth in the corporation of Trinity Church, New York? An intelligent gentleman from that city recently informed me, that he supposed it to amount to one hundred millions. Probably his estimate was too large. Suppose it too large by one-half, or even three-fourths, and yet that sum ($25,000,000.) continually augmenting. What a mighty engine may it become in destroying our noblest institutions? I may say what an engine has it already become for the destruction of the purity of religion, and the decency of manners in the person of the highest church dignitary connected with it! I have no heart even to mention the degrading vices and lewd manners of which he has been found guilty by the proper authorities of his own sect, yet, behold, how he is defended, excused, and hugged to the bosom by many, and even by the convention of his own diocese.

Does any man believe that but for the influence remote and imme-

diate of these vast chartered funds he could have held his present position even for a day? Very sure am I that Episcopalians in Virginia have no more sympathy with such men than other denominations have. A long course of corruption, founded probably as much on the evil influence of wealth as any thing else, is necessary to bring a church to such a condition.

I am happy that one of the gentlemen has had the candor to say that: "It is unquestionably true, that there are examples of ecclesiastical opulence, far transcending what we can conceive to be safe, legitimate, or useful." I ask the committee to note the admission, and make the proper inferences from it. He does not indeed say that these cases are to be found in our country, but if you create two thousand religious corporations by one act, who will be security that our country will not soon furnish as many of them as any other?

STATE OF THE QUESTION.

But it seems that careful as I was in the beginning of this debate to state the question, I am met with a flat denial, that any corporate powers, any chartered rights are sought at your hand. I confess I am amazed at this denial; and I must say that it is inconsistent with the oft-repeated language of the petition itself, and of the whole history of this movement. See pp. 8, 9. I ask the attention of the Committee to the nature of corporations. Judge Blackstone, Book 1, chap. 18, Vol. 1, pp. 475, 476, thus defines the "incidents which are tacitly annexed of course" to a "corporation already formed and named."

"1. To have perpetual succession. This is the very end of its incorporation; for there cannot be a succession forever, without an incorporation: and therefore all aggregate corporations have a power necessarily implied, of electing members in the room of such as go off.

2. To sue or be sued, implead or be impleaded, grant or receive, by its corporate name, and do all other acts as natural persons may.

3. To purchase lands, and hold them for the benefit of themselves and their successors; which two are consequential to the former.

4. To have a common seal. For a corporation, being an invisible body, cannot manifest its intentions by any personal act or oral discourse; it therefore acts and speaks only by its common seal. For, though the particular members may express their private consents to any act by words, or signing their names, yet this does not bind the corporation; it is the fixing of the seal, and that only, which unites the several assents of the individuals, who compose the community, and makes one joint assent of the whole." [The modification of this

principle it is unnecessary to state. Later authorities give the exceptions clearly.]

5. To make by-laws or private statutes for the better government of the corporation, which are binding upon themselves, unless contrary to the laws of the land, and then they are void. This is also included by law in the very act of incorporation; for as natural reason is given to the natural body for the governing it, so by-laws or statutes are a sort of political reason to govern the body politic. And this right of making by-laws for their own government, not contrary to the law of the land, was allowed by the law of the twelve tables at Rome. But no trading company is with us allowed to make by-laws which may affect the King's prerogative, or the common profit of the people, under penalty of £40, unless they be approved by the Chancellor, Treasurer, and chief justices, or the judges of assize in their circuits; and even though they be so approved, still if contrary to law they are void. These five powers are inseparably incident to every corporation, at least to every corporation *aggregate:* for two of them, though they may be practised, yet are very unnecessary to a corporation *sole*; *viz*: to have a corporate seal to testify his sole assent, and to make statutes for the regulation of his own conduct."

From this quotation it plainly appears, that unless the petitioners do ask for acts of incorporation, they ask for nothing; and then there is nothing before you, and then this whole debate is idle. But do they not ask for "perpetual succession" in the legal sense of that term? Do they not ask the power of sueing and of being sued? If not, how will they recover money due them? Surely not by violence. Do they not ask the privilege of investing their funds as they think most safe and productive? Then they wish the power of "purchasing lands." A deed of trust, or a mortgage on real estate is but a conditional purchase of lands, and if the beneficiary in said deed may not actually purchase, the deed may be a nullity. De they not desire to "have a common seal," to be used in deeds and covenants? If not, then they propose, after getting all they ask, to act in their own persons just as if you had granted them nothing, become personally owners of the real estate they may manage for the congregations they represent, and of course they will be nothing but ordinary and irresponsible trustees, such as we have now. Do they not desire the power of making by-laws? They may be few and simple; they may not be published in a code; they may be unwritten; they may be mere usages; but they may be by-laws notwithstanding. If the petitioners wish no such power then they wish to govern their property without

any principles whatever, or as Blackstone says, without political reason."

But as there is positively nothing in all this discussion, except an unmeaning war of words, and as you can do positively nothing for the petitioners over and above what they now possess, except by giving corporate powers, I must be permitted to dwell a little on this new turn attempted to be given to the discussion. All business in courts of law and equity must be in the name of some *person*. Persons are either natural or artificial. The petitioners, as natural persons, labor under no disabilities. They can take, hold, and transmit property, sue and be sued, give, alien, sell and convey as may please them best. But they ask to be made artificial persons for certain purposes. In other words they ask that natural persons may variously and numerously associate all over the state and be empowered to perform in law what natural persons may perform. I ask the Committee to consider the following legal authorities. The first is found on page 1 of Angel and Ames on Corporations:

WHAT IS A CORPORATION?

"A corporation is a body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues the same, notwithstanding the change of the individuals who compose it, and is, for certain purposes, considered as a natural person."

If any thing at all is sought by the petitioners, do they not ask as much as is here declared to constitute a corporation? Their alleged grievance now is not that they have been disfranchised as natural persons but that they have not been enfranchised over and above what they naturally possess.

Here is another authority.

Kyd, the first Englishman who professed to write exclusively and systematically on corporations, says: (1 Kyd, 13.)

"A corporation, or body politic, or body incorporate, is a collection of many individuals united in one body, under a *special denomination*, having perpetual succession under an artificial form, and vested by the policy of the law with a capacity of acting, in several respects, as an individual, particularly of taking and granting property, contracting obligations, and of suing and being sued; of enjoying privileges and immunities *in common*, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence."

This is just what I have all along said was asked for by the petitioners.

Chief Justice Marshall, in the case of Dartmouth College *vs.* Woodward, (4 Wheaton, R., p. 636,) says:

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are *immortality*, and, if the expression may be allowed, *individuality;* properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual."

The same eminent jurist, in the case of Providence Bank *vs.* Billings, (4 Peters, R., 562,) says:

"The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men."

Some of the terms in which these definitions are given, require some explanation. I will give authoritative interpretations. Thus say Angel and Ames, pp. 4, 5, 6:

"A corporation, we have seen, is a *political* institution merely, and it has, therefore, no other capacities than such as are necessary to effect the purpose of its creation. It cannot be deemed a moral agent, subject to moral obligation; nor can it, like a natural person, be subject to personal suffering. This principle explains many of the incapacities ascribed to a corporation, and without, as Mr. Kyd says, having recourse to the quaint observation, common in the old books, "that it exists merely in idea, and has neither soul nor body." It is reported by Lord Coke, that C. Baron Manwood demonstrated that corporations have no soul by the following curious syllogism: "None can create souls but God; but a corporation is created by the King; therefore a corporation can have no soul." On these principles it is that a corporation cannot be guilty of a crime, as treason or felony."

"The *immortality* of a corporation means only its capacity to take in perpetual succession as long as the corporation exists; so far is it from being literally true that a corporation is immortal, many corporations of recent creation are limited in their duration to a certain number of years. A corporation without limitation may be dissolved, and consequently cease to exist, for want of members, voluntary surrender of franchises, forfeiture by misuser, &c. When it is said, therefore, that a corporation is immortal, we can understand nothing more than

that it *may* exist for an indefinite duration; and the authorities which have been cited to prove its immortality in any other sense, do not warrant the conclusion drawn from them."

"Upon the application of the epithet *invisibility* to corporations, which is often met with in the books, Mr. Kyd has bestowed the following just criticism: "That a body framed by the policy of man, a body whose parts and members are mortal, should in its own nature be immortal; or that a body composed of many bulky, *visible* bodies should be *invisible*, in the common acceptation of the word, seems beyond the reach of common understandings. A corporation is as visible a body as an army; for though the commission or authority be not seen by every one, yet the body, united by that authority, is seen by all but the blind. When, therefore, a corporation is said to be invisible, that expression must be understood of the *right* in many persons collectively, to act as a corporation, and then it is as visible in the eye of the law, as any other right whatever, of which natural persons are capable: it is a right of such a nature, that every member, *separately* considered, has a freehold in it, and all, *jointly* considered, have an inheritance which may go in succession."

"The above criticism will apply to the *intangible* nature ascribed to corporations, and it seems equally impossible to comprehend why a number of bulky persons may not be *touched*, as well as be seen. In one sense, however, a corporation is intangible, and that is, if an execution issue against it, there is no body which can be arrested; for although the officer may both perceive and touch the bodies of the individual members, yet he cannot take the body of either of them by virtue of the execution against the corporate body. It was held, as long since as the reign of Edward IV., that a corporation could not be imprisoned; and the same doctrine has been since repeatedly recognized."

I then refer it to the Committee candidly to judge, whether the petitioners are not asking for acts of incorporation. Nor are they asking to be erected into *quasi* corporations, (see Angel and Ames, p. 17,) and if they were asking to be made *quasi* corporations, they would be asking for that which is perhaps more general, less definite, and less controllable in some respects than corporations themselves. "The overseers of the poor" for any county are a quasi corporation. That is, for certain purposes they may act as if they were a corporation. They have perpetual succession; they can take and hold, sue and be sued. They are called a *quasi* corporation because the fact of their

appointment does, without an act of the Legislature concerning them, invest them with these powers.

Lord Bacon says: "Iterations are commonly loss of time: but there is no such gain of time, as to iterate often the state of the question; for it chaseth away many a frivolous speech as it is coming forth." I trust, therefore, I shall be pardoned for this clearing of the state of the question. Having done so, it is proper I should here call attention to the fact that the committee and legislature have no evidence whatever, that the people of this State do generally desire any such law, as that I oppose. On the contrary I believe a vast majority are utterly averse to it.

THE METHODISTS.

The Conference of the Methodist Episcopal Church, called the "Virginia Conference," in session at Norfolk, November, 1845, adopted with entire unanimity, the following preamble and resolution, introduced by Rev. Dr. Smith, (now, 1847, President of Randolph Macon College,) viz:

"Whereas, the existing laws of Virginia, securing the right of property in houses of worship and in two acres of land in towns, and in thirty acres of land in the country, to boards of trustees, for the use of the church or congregation, are amply sufficient; and whereas, any act for the *general* incorporation of churches or their benevolent institutions, empowering them to hold any greater amount of money or property, would, in our judgment, be of dangerous tendency both in a political and ecclesiastical point of view, because calculated in practical operation to endow the ministry of the several churches and render them independent of the active liberality of the people they serve; therefore,

Resolved, That we do not concur in the effort now being made by the Protestant Episcopalians and others, to secure from the Legislature of Virginia a general act incorporating the several churches with their benovolent institutions, and that we earnestly recommend to our brethren of the laity maturely to investigate the probable results of this movement before they lend their names or influence to further its objects."

THE PRESBYTERIANS.

The Presbyterian Synod of Virginia took up the subject at its sessions at Norfolk in the fall of 1844, and voted as follows:

"Whereas, the Synod of Virginia are informed through the public prints, that petitions will be presented to the Legislature of this Commonwealth, earnestly calling upon them to enact some general law for the indiscriminate incorporation of institutions, claiming to be Literary,

Benevolent, or Religious, and that great efforts are making by gentle men every way entitled to respect for their piety, talents, and high character, to present these petitions in an imposing form; therefore,

1. *Resolved*, That this body, composed of the ministers and Elders of the Presbyterian Church in Virginia, are imperiously called upon for an expression of their views on a subject so deeply affecting the religious and political interests of the community, among whom they dwell, and of whom they form a component part.

2. *Resolved*, That this Synod, in the main, cordially approve of the *general policy* of the Legislature, in abstaining from all interference with religion, farther than to spread over it the shield of their protection, so as to secure entire religious freedom to every inhabitant of the State.

3. *Resolved*, That this Synod cannot view without serious apprehensions, the adoption of such a measure as that set forth in the foregoing preamble, which the history of the church and of the world, proves to be fraught with so much evil to the welfare, both civil and religious, of mankind.

4. *Resolved*, That this Synod do enter their most solemn protest against the enactment by the Legislature of Virginia, of any *general* law for the indiscriminate incorporation of institutions, claiming to be Literary, Benevolent, or Religious.

5. *Resolved*, That this Synod do most respectfully ask of the Legislature of this Commonwealth, that they will make no fundamental change in the existing laws of the State, which have any bearing upon the subject of Religion or Religious Institutions;—but that they will leave themselves at liberty to consider each particular application, which may hereafter be presented to them, on its own merits, and to act on it under a sense of their duty to God and to their country.

6. *Resolved*, That should the petitions, above referred to, come up for consideration in the General Assembly of Virginia, the Stated Clerk be directed to forward an attested copy of this preamble and these resolutions to the Speaker of the Senate, and to the Speaker of the House of Delegates."

I understand that to the last General Assembly a memorial, adverse to the petition before you, was presented. Not having seen it I shall say nothing concerning its contents.

BAPTISTS.

There has been an attempt made to produce the impression upon the Committee, that the Baptists favored the passage of a *general* law. This I believe is an entire mistake. That denomination does, I be-

lieve, desire acts of incorporation for two or three religious societies; but I hold in my hand a paper, which has been laid upon the desks of all the members of the Legislature, signed by the Reverend J. B. Jeter, Pastor of the First Baptist Church in this city, in which he denies for himself and his denomination, that he or they desire any corporate power to be granted to religious congregations.

EPISCOPALIANS.

The "Journal of the Convention" for May last, shows that there are in the Protestant Episcopal Church in this Diocese, 4,328 communicants of both sexes, and all white except *eleven*. Now I do not believe a majority, or even a moiety of the males among them desire the passage of any such law. I have heard many lay members of that communion express their views on the subject, and out of this city I have heard but *one* say a word in favor of the measure. I have heard many here and elsewhere utterly condemn the movement, not as *ill-meant*, but as the fruit of mistaken views. No people in the Commonwealth have given me more aid and comfort in resisting the petition, than zealous and respectable communicants in the Protestant Episcopal church. But I infer the opposition of the body of the Episcopalians of Virginia to the petition from grounds far more conclusive than my own observation. The Convention of that church has been voting in favor of this matter for some years, as I have already shown. What has been the effect? Have the people responded? No, Sir. In Bishop Meade's address to the Convention last May, I find these remarkable words: "It is proper to state, that, in order to call the attention of the ministers and members of the Episcopal church in Virginia to the resolution of the Convention recommending petitions to the Legislature from the different parishes, I addressed them in a Circular through the Southern Churchman, during the last summer. I am sorry to say that the resolution of the Convention was complied with in but few instances. Of course, nothing but failure could be expected, if friends of the measure exhibited such lukewarmness in its prosecution." Here, then, with all Bishop Meade's powerful influence, backed by the Convention and a Circular sent out, Episcopalians in Virginia generally decline to have any thing to do with the measure. But "few" even sign a petition. They are generally "lukewarm." This statement or something else caused the Convention at its last meeting by a formal resolution to "call upon all the ministers, members and friends of the Episcopal church of Virginia to adopt such

measures on their part, as the Committee shall advise." Journal, 1845, p. 33.

Let us now see the result. You have one solitary petition before you purporting to be from the Episcopal church, drawn up or presented no doubt by the Committee in this city, and, if the printed copy be correct, not a solitary name of man, woman or child, is affixed to it.

I have no doubt that the great body of Episcopalians in Virginia, notwithstanding the urgent efforts made to bring them up to the *petitioning point*, are utterly opposed to the whole plan.

All the foregoing general statements derive great force from the following considerations :

1st. *Human nature is ever and every where the same.* If history teaches any thing, it teaches the corruptibility, the depravity of human nature. If observation teaches any thing, it teaches that there is a great deal of human nature in mankind in our own day. A state of things may yet arise in this country, in which nothing may be so insecure as those sacred things, which men have made odious by attempting to legislate too much concerning them.

One gentleman tells us, I suppose in order to allay apprehension, that "we live in a new and advanced stage of civilization." Sir, the greatest wrongs, and the greatest abuses have been perpetrated in the highest stages of civilization. Was not the last century the most civilized century in the history of the world? Yet what did we behold in the two most civilized nations on earth in that century? The wrongs of England against India and America were *chiefly* committed in that century. In that century France presented a spectacle, which the world had never before witnessed, and I pray may never witness again. Who but God has fathomed human depravity? Lord Bacon in his Essay on Superstition says: "Atheism did never perturb states." This was true up to his time, and even until within the last hundred years. Since that time a very large portion of the distress and perplexity of nations has been from atheism. All the horrors of the French Revolution, and its immense evil consequences to other nations sprang from atheism. The same immortal writer confirms also the view given of "civilization." He says: "We see the times inclined to atheism, as the time of Augustus Cæsar, were civil times." Civilization therefore may not be trusted to defend us against the native wickedness of man. Perhaps a very great man was never more mistaken than when he said: "Vice loses half its evil by losing all its grossness." A wounded gladiator, adjusting himself to die gracefully, is to my mind in some respects an object of greater abhorrence than if he were to fall awkwardly, or

stagger and stumble like a bullock that had received the deadly blow.

2nd. *Wealth is power.* It is a tremendous power in itself. The love of it, like pride, is an universal sin, and is the root of all evil. Though money itself is a good thing, yet its abuse is most easy and natural. Money is a good servant but one of the hardest masters men or nations ever had. Let the churches all become wealthy corporations, and is any man so blind as not to see that they must exert a vast *secular* power? Suppose five churches to be entitled each to hold a capital yielding at six per cent. per annum 2,000 dollars (total $10,000.) This is the legal interest on $160,000. Seven times that amount would be $1,120,000. This money would be invested in real estate, or loaned on bond and mortgage. Now when we remember that we have the *highest* authority for asserting that "the borrower is servant to the lender," and, by parity of reasoning, that the tenant is servant to the landlord, can we doubt the immense power, that the corporators of such vast church funds would ere long exert in political elections, and public measures? They would become—

Parvis componere magna—

a kind of baronial Lords surrounded by their serfs and vassals.

3rd. *It cannot be denied that the greatest good and the greatest evil have alike flowed from sources apparently contemptible.* So true is this that some men have even doubted whether the distinction between great and small events had any foundation in the nature of things, but only in our modes of conception. However we may decide that point, man certainly cannot see the end from the beginning. To do that is the prerogative of Omniscience. "Behold what a great forest a little fire kindleth." This remark holds with tremendous force in some kinds of legislation. A government may waste millions on unworthy objects, and if their acts be not regarded as precedents, they do but exhaust the Treasury, which a year or two of thrift will replenish. But when a legislature adopts a new principle into its policy—a principle, which is to extend to every corner of the Commonwealth in all coming time—it puts to work an engine whose results no finite mind can foresee. An eloquent writer says: "A new principle may shake a continent." The enormous wealth of the corporation of Trinity church, New York, has, I am told, all flowed from a few acres of pasture ground.

4th. *It is also taken for granted that the people of Virginia, and the members of this Committee, believe that an honest attempt to estimate consequences is* SOME *part of the duty of a Statesman,* and that as prescience is not granted to any mortal, it is the duty of all, some-

times at least, to learn from the experience of past generations. I acknowledge the superior wisdom and distinguished virtue of the gentlemen, who have urged the granting of the chief prayer of this petition, and as Mr. Burke said of Pitt and Fox: "I should very much prefer their judgment to my own, if I were not obliged by an infinitely overbalancing weight of authority to prefer the collected wisdom of ages to the abilities of any two men living." One of the gentlemen has said that "one must look far ahead * * * to redeem his opposition [to the petition before you,] from the appearance of unreasonable and capricious hostility." Sir, I ask the Committee to "look far ahead," and far back also. "Our hind sights are better than our foresights." We ought to use some sagacity—especially ought the past to instruct us. If you go into this business it will have lasting and ever-growing consequences. Unless, as the French Comedian said of some, we are "*plus sages que les sages*," we must consent to learn from the past.

5th. *In state affairs it is not meet that the officers of government should depend upon the voluntary contributions of individuals for their support; but on this point and many others, Christ's kingdom is not of this world.* One of the great laws of his empire is, "the Lord loveth the cheerful giver." Another is, "that they who sow spiritual things shall reap of their hearers carnal things," in such measure as their wants require. The very life of religion, in a vast majority of cases, depends upon the contributions of the people to the support of their pastor being absolutely voluntary. "The act, establishing religious freedom," does, in my judgment, speak important truth when it mentions "the comfortable liberty of giving one's contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness," and much more to the same effect.

6th. *By the consent of a large number of good writers on the subject of charities, testamentary bequests to religious objects are generally of suspicious character, especially when made in extremis.* "Nothing is so rash as fear," and no fear is so powerful as the fear of meeting an offended God. A dying man will ordinarily do any OUTWARD act, which he believes will propitiate the favor of his JUDGE. Let it once be generally thought that a man may buy a pardon for all the guilt of a misspent life by leaving to the church a part or the whole of his sordid pelf, perhaps thereby disappointing the reasonable expectations of his poor and dutiful relatives, and it will not be half a century until more than a tithe of all the property in this country will be in the hands of ecclesiastics or their tools. Among some in this

country it is said, and I believe truly said, that the doctrine is taught and practised upon, that money has something to do with forgiveness of sins, both before and after death. It is said that the number who hold this doctrine is rather increasing. Is this the time to open the door and give license to practices which will grow out of this doctrine? Would not a host of evils follow such a grant? Would not the relatives of dying men, who had property, be more than ever jealous of the visits of clergymen to their rich, sick friends, and a thousand obstructions be put in the way of an approach of the most pious pastor, who only desired to point the dying man to the Lamb of God, but who was *suspected* of wishing to influence his last will? Suppose the faithful pastor visits, with the best intentions, his dying parishioners, and never alludes to property, yet four out of five, or even one out of five, shall be found to have left a will virtually disinheriting a worthy family, how must the reputation of this minister suffer? He may protest his innocence, but he cannot prove it. Suspicion rests upon him with all the malign influence of positive proof. As a minister of the gospel, and feeling that "a good name is rather to be chosen than great riches," yea, that a clergyman's reputation is his capital in his dealings with men, I hope that no such law as is solicited by the petitioners may be passed. One gentlemen has asked, am I afraid to trust myself in such circumstances? I answer, Yes! My daily prayer is, "Lead me not into temptation." I believe that the "heart is deceitful above all things, and desperately wicked." I believe that this is as true of my heart as of any other man's. If I know any spiritual wisdom, it is that the strength of the best of men consists in a strong distrust of their own goodness, and a constant desire to avoid, rather than to court trial of their principles.

What will be the effect of the passage of this law on *ecclesiastical* litigation in church courts, I will not stop now to inquire. But it may be well to inquire what will be the probable effect in bringing the parties that may arise before the courts of law and equity, and filling the judicial dockets with painful controversies between heirs at law and church corporations, between persons of different denominations, and between those of the same denomination. I have witnessed one of these contests before a court in another State, and although in the end justice did wonderfully triumph, yet I must say that in my opinion even the party gaining in such suits is always a loser, and the cause of true religion the greatest loser of all. There is in the Scriptures a remarkable passage which relates to Christians going to law. I refer to 1 Cor. vi. 1—7.

I am aware that there is considerable diversity among men of respectable learning in the interpretation of this passage, but I am willing to give it the most liberal construction, contended for by any serious and respectable commentators, and yet I contend that it does give a solemn rebuke to all religionists, who shew a spirit of contention, and of readiness to go to law. Shall the church of God then solicit and obtain from the Legislature a "boon," as one gentleman calls it, which will shut her up to the necessity of litigation? A private person may lawfully and honorably relinquish his right to property, but a corporator, like an executor, must defend the rights of those he represents. Does it not look like courting temptation to seek to bring questions of church property under the laws and into the courts? Is it not better that churches and religious people should continue to settle their controversies about church property, as they always have settled them in Virginia, by a private contract, or by a reference to a few persons of reputation? Whatever others may think of this matter, to me it seems to be entitled to the greatest weight.

Lord Bacon has well said: "He that defers his charity until he is dead, is, if a man weighs it rightly, rather liberal of another man's than of his own."

7th. Should the petition, as to churches, be granted, *who will be the chief gainers of money by it?* I suppose none doubt, that the least pure portions of the church will be the readiest to avail themselves of it in a dangerous manner. The men who pant for the dust of the earth on the heads of the poor, who sell the poor for a pair of shoes, who hold that gain is godliness, these will first fill well their coffers. Whether they shall be my own or another denomination, is to this argument, irrelevant; but that the most corrupt would first introduce abuses, cannot be doubted. I only repeat that human nature, under the best moral and religious discipline, has, when too severely tried, always proved itself a very poor thing.

8th. *It seems to me that we owe something as a nation to the other nations of the earth.* There is a great war of principle now going on between the old, rotten and ruinous principle of making the church of God independent of the free-will offerings of the people, on the one side, and the *voluntary principle* on the other. Throughout the world the friends of liberty point to the United States and say: "Behold a successful experiment." I myself admit that the time is far too short to settle anything very conclusively. The inherent strength and righteousness of the voluntary principle must as yet be its chief commendation. Yet an experiment of nearly seventy years is worth something,

and over masses of men it has great influence. In the name of the down trodden of other lands, in the name of our common humanity, I ask this body to pause before they wrest from the friends of liberty in other lands, the argument drawn from the example of at least the "Old Dominion;" before they spoil a pattern by which other lands seem disposed, in some little degree, to model their institutions.

9th. *Nor ought it to be forgotten that in our country, while the agrarianism of some excites disgust and horror, aristocratic principles in Church and State, have for some years past, had a most rapid growth, in almost every respect.* A kind of aristocracy of talents is to be expected in a free government, nor is it very dangerous, for talents are not hereditary. No man knows beforehand whether his son will be a wise man or a fool. The aristocracy of personal wealth is also slightly dangerous among us, for it changes hands very often, and the abolition of the rights of primogeniture makes it comparatively harmless. But the aristocracy of politics is a dangerous affair. Just in proportion as it gains strength, does it both feed and provoke the agrarian spirit. But the aristocracy of the church is the most dangerous of all. It is more deeply seated. It moves stronger and more hideous passions. In a land where no church is by law established, and where there can be, therefore, no dissent, it ignorantly and audaciously calls those out of its pale, "Dissenters." It assumes a magisterial, or what is no less offensive, a patronising air. It calls its party "*the Church!!!*" It denominates its dignitaries by the city or commonwealth where they happen to reside. Thus we have the "Bishop of New Jersey," and "the Bishop of Richmond," and the "Bishop of Virginia." It speaks of other churches, which outshine it in talents, piety and numbers, as being at best "religious societies." It refuses its houses of worship to other communions, even to preach a sermon over their dead. I care not where this spirit is found, I abhor it. It is hideously anti-American and anti-Christian. When I have found it in a Presbyterian, I have abhorred it most of all. Well did Luther say: "Every man is born with a pope in him." Let us not then by legislation, foster and fatten this pope. Henry Sacheverell is indeed dead. But his spirit lives, and must be resisted, while men have any regard for truth and righteousness.

10th. *A wise man will hardly believe that our country is forever hereafter to be free from wild excitement, leading to violence and rancor.* There is always, at least, a war of argument and of principle between sin and holiness, good and evil. Time may disclose in the bosom of this Commonwealth, the fiery elements of a moral Vesuvius.

It has already been seen in a city North of us, that pistols and muskets can be used at such times, both to assault and defend church property. With every precaution such times may come upon us, but will not the horror of them be fearfully magnified by corporate powers well used in hoarding? In such times ecclesiastics become too often the fautors of violence. And a wicked, revengeful ecclesiastic is the most cruel of all excited men. Pilate was not so unrelenting as Caiaphas. If we search for the reason of this extraordinary depravity, I suppose it is to be found, *first*, in some supposed sanctity of office, turned into the fuel of evil passions, and, *secondly*, in the fact that these men have been better instructed, and perverted it all to the hardening of their hearts against good impressions. Many have been worse men, worse citizens, and worse neighbors for being zealous but hypocritical professors of even true religion.

11th. *Should this petition be granted, will it not, especially in times of high excitement, probably have a powerful influence over elections?* Mankind are depraved. Politicians are men, and "the tribe of vulgar politicians," says one, "are the lowest of our species. There is no trade so vile and mechanical as Government in their hands. Virtue is not their habit. They are out of themselves in any course of conduct recommended only by conscience and glory. A large, liberal and prospective view of the interests of States passes with them for romance; and the principles that recommend it for the wanderings of a disordered imagination. The calculators compute them out of their senses. The jesters and buffoons shame them out of every thing grand and elevated." It is no slander to assert that such is the character of many noisy men in our country, and that the number seems to be on the increase. Grant this petition, and in fifty years religion, or the adjuncts you shall give it, will determine thousands of votes in this Commonwealth. Many a vote, it is now believed, is sold for a gill of whiskey. The same vote might easily be influenced by the terrors of a constable or sheriff distraining goods, or by a threat of protest at bank. Shall such an engine be erected here?

12th. *The only way, as it seems to me, that the Legislature can grant the petitioners what they ask will be by delegating their power to some court or body to act for them.* You have not even the names of all the societies and churches before you. You must, therefore, pass a *general* law, directing those who would get your "boon" to apply to some chancellor, judge, court or magistrate, with an exhibition of proof that the requirements of the general law have been complied with, and then they shall have their charter. *Qui facit per alium, facit*

per se, is a dangerous maxim to introduce into this business; a principle for centuries denied in England *quoad hoc*, and to this day regarded with jealousy under the British Constitution. See Angel and Ames, p. 49.

13th. *It is also worthy of remark, that in our country we are making a great experiment as to the extent to which corporations may be carried in all matters.* There is nothing equal to it in the history of the world. We have corporations for digging coal, and copper, and lead, and gold; for making iron, and railroads, and blankets; for insuring houses; for spinning cotton and wool; for almost every thing, even for burying the dead. Indeed, say Angel and Ames, "we have in our country an infinite number of corporations aggregate which have no concern with affairs of a municipal nature. * * * There is a great difference, in this respect, between our own country and the country from which we have derived a great portion of our laws. What is done in England by combination, unless it be the management of municipal concerns, is most generally done by a combination of individuals, established by mere articles of agreement. On the other hand, what is done here by the co-operation of several persons is, in the greater number of instances, the result of a consolidation effected by an express act or charter of incorporation." See Preface. So that it would be wise for us to watch this peculiar feature of our institutions as to secular affairs, before we launch forth on this sea, as yet but little sounded and explored by us. I am not here to deliver lectures on secular corporations. I am free to say I know no valid objection against them, if necessary. I have no prejudice against them. But I do say, that in *all* respects, and as to all institutions, "the price of liberty is eternal vigilance."

14th. *I also ask the committee carefully to consider the legitimate ends of legislation in minute detail before they enter upon the work of filling the land with corporations.* If I have utterly failed in abstract argument, yet if the committee think I have history on my side, that is enough to carry my point. I scarcely know a more just observation than that of a great writer upon Government, who has said: "Politics ought to be adjusted not to human reasonings, but to human nature, of which the reason is but a part, and by no means the greatest part." What were the *jus civitatis*, the *jus commercii*, the *jus connubii*, the *jus hereditatis*, the *jus suffragii*, and the *jus honorum* so liberally bestowed by the Romans, compared to the lavish bestowment of corporate powers asked for by the petitioners? I cannot now spare time to trace all the differences between them. One may suffice. All

these rights bestowed by the Romans tended to make men in interest, in sympathy, in conscience, one with the state. Corporate rights, for religious purposes, all the world over, for more than 1400 years, have led the corporators to pursue a line of policy commonly adverse to, and always diverse from, the state, unless the state were a tyranny, or unless the head of the state were the head of the church.

15th. *The Committee will keep in mind that all church property in Virginia is virtually held in mortmain.* It is not taxed. There is no disposition to tax it. It pays nothing into the revenue. The reasons for this policy are, doubtless, weighty. Should the chief prayer of the petitioners be granted, the amount of church property in Virginia, in a hundred years, will amount to some millions. It is probable it will amount to many millions. Let those whose sworn duty it is not to legislate for religion, but rather to let it alone, estimate, in their action on this petition, what will be the influence of the withdrawment of so large a portion of the property of the State from all share in the support of the public faith, and in the common defence. "The revenue is the State," says Mr. Burke.

16th. *Let it never be forgotten that so far as we can learn from the history of all charities, foundations, and societies, states and donors profess to have been actuated, and probably in creating them were actuated by motives of benevolence.* There was at least a specious appearance in their original establishment; but "an ill-founded plausibility in great affairs is one of the sorest evils under the sun." If any thing is to be done in this business, let us have light, and much of it. Let antiquity, history, experience and argument, disperse the darkness in which some appear to be. To one in the dark all colors are alike. If I have only darkened this "counsel by words without knowledge," let gentlemen on the other side prove me mistaken. Let them bring forth the lessons of experience taught by any country for three centuries together, and shew us that all I have said is but mistake.

17th. *The history of the Jews gives no example to encourage this grant.* One of the gentlemen has had the kindness to say that I was a greater lawyer than himself. I do not like to be outdone in kindness, courtesy, or a compliment. What less, therefore, can I say than to admit that he is the greatest theologian I ever saw, and the greatest scholar the world ever produced? Something has been said about the taste of holding such a discussion as this. If there be any bad taste in it the charge falls on the gentleman who has at last come into it, on his friend who at first consented to it, and on the Committee who proposed it, no less than upon myself. In noticing the charge of bad

taste, for the sake of dismissing the matter as unworthy of serious attention, I unfortunately quoted the expression, "*De gustibus non est disputandum*," and the gentleman has not only repudiated the sentiment, but has called in question its Latinity. I had supposed up to the time of his remarks, that Blair's Rhetoric was a book of some authority in such matters; I had also for some time esteemed Dr. Samuel Johnson as more than a mere sciolist in language, and I had observed that in his Life of Congreve he gave this very sentence in Latin; but I now retract, confess and bewail my error, and admit that Dr. Johnson, had he lived in Richmond, Va., in this glorious 19th century, would never have been guilty of such egregious error. I hope however, that his memory will not instantly become infamous, as he was a good sort of man, and would if present, no doubt, make humble acknowledgments.

I have also admitted that the gentleman is a great theologian. Nor do I mean to retract this admission; nevertheless, Homer nods sometimes; and I suppose it is not disrespectful to say, that the allusion of the gentleman to ancient Jewish institutions in favor of the prayer of the petition, is perhaps the most unfortunate that he could have made. The learned Rabbi, David Levi, than whom the modern Jewish church has had, I believe, no greater luminary, speaking of the support of the Jewish Hierarchy, says:

Although "the whole tribe of Levi had no inheritance in the land," yet "was it not lawful for the priest or Levite to come and demand the tithe as a right, but only to ask for it as a free gift of the husbandman; (who might give it to whatsoever priest or Levite that he chose;) much less had they any power to take it by force; or to institute a process by law against them for non-payment."—*Rabbi David Levi v. Paine*, p. 97.

"In this year, (Jubilee,) all the estates that had been sold were to return to their former proprietors, or to the families to which they originally belonged; so that no family could be sunk and ruined and doomed to pepetual poverty, as the family estate could not be alienated for more than fifty years."—*Ib. p.* 101.

Dr. Jennings says that this law was famous among the heathen. Diodorus Siculus (lib. 40) mentions it, and Aristotle says, the Locrians had a similar law. Why will not the gentleman "give himself to reading?" I fear he has never read Selden's immortal work. "*De successionibus in bona Defuncti ad Leges Ebraeorum.*" If he has not, I should not be surprised, for he so little understands the history of even the English church as to talk about its "Theocratic Preten-

sions."* Sir, it never had, it never made any "theocratic pretensions." This is mere grendiloquence. Theocracy is a government administered by God, not by a vicegerent, nor by those appointed as ordinary rulers are. There never was but one theocracy on earth; that was the ancient Jewish Commonwealth.

Indeed the most casual reader of the Scriptures ought to have observed that no man in all that renowned Commonwealth of the Hebrews could lawfully alienate to prince or priest his patrimony. The Law of Moses is express. See Numbers xxxvi. 7, 8, 9, and Lev. xxv. 13—16, 23.

This matter is strikingly illustrated in the history of Ahab and Naboth. The latter owned a small vineyard, which the former proposed to buy. Naboth, fearing God, refused to alienate his inheritance. That woman Jezebel, Ahab's wife, considered it outrageous that a poor man should refuse to conform to the desires of the prince, and contrived his death. His life was taken; but what was Ged's message to Ahab? "In the place where dogs licked the blood of Naboth, shall dogs lick thy blood—even thine." The whole history of the transaction is given in the 21st chapter of 1st Kings, and is well worthy of a careful perusal. I therefore assert that no argument for corporations having power to take, hold and transmit real estate, acquired by devise, gift, or sale, can be drawn from the Jewish Commonwealth.

Another small mistake into which our theologian has fallen, is that he asserts that "Judas was a common carrier and Paul was a trustee."† He expresses surprise that I should not have known this difference between these two men.

Cunningham in his "Law Dictionary," says: "All persons carrying goods for hire, as a master and owners of ships, lightermen, stage-coachmen, &c., come under the denomination of common carriers."

The same writer in the same work, describes a trustee as one who has "a right to receive the profits of land, and to dispose of the land in equity. Holding the possession and disposing thereof at his will and pleasure are signs of trust. A trust is but a new name given to an use, and invented to defraud the statute of uses."

Now, Sir, I assert that neither Judas nor Paul was a trustee, or a common carrier, in the management of funds committed to them, provided the terms "trustee" and "common carrier" are to be used according to their technical legal meaning. Neither of them were responsible to the law. The accounts of Judas were not even audited. Nor have we any reason for supposing Paul's were. When I said Judas

*Printed Speech, p. 24.

†See Printed Speech, p. 24.

was a trustee before Paul, I used the term in its general sense, as designating one in whom confidence had been reposed by his Master and brethren in the management of the little funds of Christ's family. I never imagined that I should be understood as asserting, as the gentleman does, that Paul was a trustee in a technical sense, in opposition to a common carrier, as Judas was. I will not agree to give up my argument, but I will agree that the gentleman is the profoundest theologian and lawyer *in the world* if he will prove that Paul was a trustee and Judas a common carrier, in a technical sense, as he has asserted. This is indeed a small matter, but in this discussion an effort to degrade what I esteem truth has been so often resorted to that it may not be amiss to brush away some of the cobwebs.

18th. *Let it be remembered, too, that it is now the settled doctrine, that the books of a corporation are to be considered as the books of a private individual, and no inspection can be compelled by any man, however actuated by a public spirit, unless he have personal interest in its affairs.*

See Angel & Ames, p. 535, for numerous cases. In 5 Cowen, (N. Y.,) R. 419, in the case of the Utica Bank *vs.* Hilliard, it was held, the defendant could not compel the cashier of the bank to produce the books and papers, even by a *subpæna duces tecum*, so that the corporations may laugh at men who come and demand their books for the purpose of detecting abuses.

19th. *If the doctrine contended for by one of the gentlemen be true, and there would seem to be some ground for it by the Girard Will Case, and according to the doctrine of Angel and Ames, p.* 116 *and onward, it suggests the propriety of special caution on the part of the Legislature.* That doctrine is, that the principle of the law of "charitable uses," or "pious uses," is a part of the common law. Let this doctrine once obtain in the courts of Virginia, and the petitioners need not come to the Legislature for power to take and hold. I mention the matter here to show that the people of Virginia will perhaps have the subject brought home to them in some way, and I would commend to them the motto: "*Obsta principiis.*" The Attorney General, in the case of Hart's Executors, (4 Wheaton,) argues the same way, and quotes Lord Chancellor Macclesfield, Lord Keeper Henly, and Lord Thurlow, as authorities. On the other hand, Mr. Leigh, in the same case, says: "All the elementary writers and compilers concur in deducing the jurisdiction of the English Court of Chancery over charitable bequests, from the statute of Elizabeth; tracing all the powers of the court, as a court of equity over this sub

ject, to that source." Lord Loughborough, Lord Eldon, and Sir W. Grant, are among his authorities.

Judge Marshall argues to the same effect in the decision in the same case.

Under the opinion of Judge Marshall we have long had quiet and freedom from contention, but as there is evidently to be at last an attempt to introduce a new construction of the law on this point, I solemnly ask the Committee to pause before giving an existence to some thousands of aggregate corporations, which with all the power they must have under any construction of the act 43 Elizabeth, must have that power vastly augmented by the settlement of the law contrary to the opinion of Judge Marshall.

Let us look at some of the reasons urged for the change sought by the petitioners.

I. *The first is that much property is now lost to the church.* To this I reply,

1. It is not lost to the *State*, and the great duty of the Legislature is performed when it well provides that the Commonwealth shall suffer no detriment, and that every man shall have all his personal and hereditary rights, and be free to worship God in the manner most agreeable to his own conscience without let or hindrance. If the kingdom of God were meats and drinks, and pomps and funds, the aid of the Legislature might be necessary. But it consists in righteousness, in peace, and in joy in the Holy Ghost. Surely, then, it can be established without aid from the Legislature.

I reply,

2. That it is not lost to the heirs at law, who in an overwhelming proportion of cases, in our country, need all they are legally entitled to, for the purpose of educating their children, supporting the infirmities of age, and enabling them to reach that position in society the most conducive to virtue, intelligence and usefulness.

3. Can that money be said, in general, to be lost to the church, which is in the hands of the heirs of pious men, who have died and left it, together with their good example, an inheritance to their children? Could it, in general, be in better hands? When Queen Elizabeth was taunted by a foreign minister with the scantiness of her exchequer, she wisely and indignantly replied: "My exchequer is in the hearts of my people." Could it have been in a better place? And can the exchequer of the church be in a better place than in the hearts and hands of the people of God and their children?

4. It is freely admitted, that some hard cases will probably arise

under any legislation which the wit of man may invent. Some such may have arisen in this State. But what are they all compared to the intolerable evils of indiscriminate acts of incorporation? The remedy proposed by the petitioners, is like taking the club of Hercules to brush a fly off an infant's face; you will certainly bruise, and probably kill it, in protecting it from the winged insect.

5. I must again remind the committee, that whatever is given to these corporations, is never, except by despotism or revolution, yielded, be the social or national distress ever so great. To every religious corporation may be applied the fable of the serpent and the file. It always takes, and never gives. It is like the cave of Cacus—Aventinæ timor atque infamia sylvæ—the son of Vulcan and Medona. The tracks of the oxen are seen going in, but never coming out.

This retention of funds by religious corporations is a necessary result. I know nothing more dishonorable and infamous than for a corporator to take funds created for one object and give them to another and a different object. Funds bequeathed to support a religious society can never, but by baseness in the corporators, or by a mob, or a revolution, be used, even to stay a famine or repel an invasion. This principle is as sound as it is strong. Let the committee keep it in mind.

II. *But we are told that other States have set us the example of passing laws similar to that sought by the petitioners*, and we are asked, with an air of triumph, What evil has resulted from their enactments? To this I reply—

1. Few States have passed laws so comprehensive and so indefinite as that petitioned for. Most of them go no farther than the act of the General Assembly of Virginia, passed at the session of 1841–2.

2. The examples cited, even if no ill had resulted, would be useless; for time has not yet sufficiently tested their operation. The age of a nation might fairly be put down as averaging more than a thousand years. How can Arkansas, or Michigan, or even the oldest State in the Union, rise up, summon the world to an audience, and pronounce that it has wrought out a great problem in politics? Such an attempt would look like a child of five years old instructing Methuselah. The profoundest jurist that Virginia ever produced said it was not possible for any sagacity to foretell the operation of a constitution. Time alone could test its effects. The same remark is equally applicable to a law like that asked for. The very oldest law that I have seen quoted in the published arguments on this subject was passed in the year 1813, less than 33 years ago, and not, as has been said in this debate, more than 50 years ago. Gentlemen, you must excuse me if I excuse myself

from attempting to show that so brief an experience falls far short of demonstrating any thing conclusively in favor of religious corporations in our country.

3. I wish to speak very respectfully of the laws and people of other States; but I shall speak truly and fearlessly. I do, therefore, declare, that in my soul I utterly detest many of these laws and judicial decisions, as utterly subversive of all the great principles of personal and religious freedom. I go further, and declare that, in my opinion, there is not a man in this hall who does not, when informed, agree with me. It is because people will not read that they think every thing is right in our country. I believe many of these foul blots on the fair name of sister States would not be there were it not that they have pursued a line of policy different from Virginia on the whole subject of religion. I say, then, that some of these laws, and judicial decisions under them, do loudly warn us to beware how we enter upon the first steps towards imitating them.

NEW YORK.

I hold in my hand 8 Johnson, and ask the attention of the committee to the remarkable case of the People vs. Ruggles, p. 290. In this case, Kent, C. J., still living, affirms a judgment given in a lower court by which Ruggles, whose coarseness seems to have been equalled only by his folly and depravity, "was sentenced by the court to be imprisoned for three months, and to pay a fine of 500 dollars." The crime charged in the indictment was "blasphemy;" and the Chief Justice argued that blasphemy was, in New York, an offence at common law.

Are the people of Virginia in favor of such decisions here? If blasphemy may be punished by fine and imprisonment, why may not heresy and schism? These often injure the morals and destroy the peace of communities to an unspeakably greater extent than any such coarse language as the poor sinful man Ruggles used. If this wretched man had been let alone, or only treated and exhorted with genuine kindness, possibly he might have been brought to repentance. But I will venture to opine that he left his prison more a scoffer than he entered it. I rejoice that in Virginia the courts cannot punish blasphemy, or heresy, or schism.

MARYLAND.

As this appeal to other States approaches much nearer to an appearance of argument than most I have heard from the friends of the petition, allow me to give some other examples. I will take our sister Maryland next. In her policy there is much to admire and much to

abhor. I take her, for she seems to be a favorite with the petitioners. Well, sir, to Maryland we go.

In "Maxcy's Revised Laws of Maryland," vol. 1, p. 169, is found the following statute. Should any one be disposed to adopt proper legal measures for prosecuting a violator of its provisions, and he be proven guilty, the jury must convict, and the court must sentence him, or be guilty of perjury. The statute is in these words: "That if any person shall hereafter, within this province, wittingly, maliciously and advisedly, by writing or speaking, blaspheme or curse God, or deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity, the Father, Son and Holy Ghost, or the Godhead of any of the Three Persons, or the Unity of the Godhead, or shall utter any profane words concerning the Holy Trinity, or any the persons thereof, and shall be thereof convict by verdict or confession, he shall, for the first offence, be bored through the tongue and fined twenty pounds sterling to the lord proprietor, to be applied to the use of the county where the offence shall be committed, to be levied on the offender's body, goods and chattels, lands or tenements, and in case the said fine cannot be levied, the offender to suffer six months imprisonment without bail or mainprise; and that for the second offence, the offender being thereof convict as aforesaid, shall be stigmatized by burning in the forehead with the letter B, and fined forty pounds sterling to the lord proprietor, to be applied and levied as aforesaid, and in case the same cannot be levied, the offender shall suffer twelve months' imprisonment without bail or mainprise; and that for the third offence, the offender being convict as aforesaid, shall suffer death without the benefit of clergy." See also Dorsey's Laws of Maryland, vol. 1, pp. 63, 64.

Maxcy's Laws were published in 1811. Of course the whole statute was in force then; yes, sir, and for years afterwards. In Dorsey's Laws of Maryland, vol. 1, p. 706, (edition of 1840,) 1819, chap. 49, it appears that so much of this statute as relates to whipping, burning in the forehead, and boring through the tongue, was repealed; but no more. For the third offence it is still death without benefit of clergy by the law as revised in 1819, for the third time to be guilty of blasphemy, as defined in the act above. Let me ask if Maryland should be a guide to Virginia? Do not the gentlemen wish that they had never cited Maryland in this controversy? I also ask the committee to read the whole act of Assembly of Maryland of 1798, Dorsey, vol. 1, pp. 359—367, and say whether we in Virginia wish a law fining a man pretty heavily for refusing to "register" a man as a member of a

particular church, if he demands it, and pays the fee of 6 cents? There are other things in the act worthy of notice.

The truth is Maryland was far behind Virginia during the last quarter of the last century in her views of religious freedom. In her "Declaration of Rights" is abundant evidence of this. In section 33 it is provided that her glebe lands shall forever remain the property of one sect; and they do still remain so to this day, although bought and paid for by funds raised from Quakers, Methodists, Baptists, Papists, Presbyterians and others, in common with members of the Church of England. That section in Maxcy reads thus: "That as it is the duty of every man to worship God in such manner as he thinks most acceptable to him, all persons professing the Christian religion are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless under colour of religion any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the Legislature may, in their discretion, lay a general and equal tax for the support of the Christian religion, leaving to each individual the power of appointing the payment over of the money collected from him to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county; but the churches, chapels, glebes, and all other property now belonging to the Church of England, ought to remain to the Church of England for ever. And all acts of Assembly lately passed for collecting moneys for building or repairing particular churches or chapels of ease, shall continue in force and be executed, unless the Legislature shall by act supersede or repeal the same; but no county court shall assess any quantity of tobacco or sum of money hereafter, on the application of any vestrymen or churchwardens; and every incumbent of the Church of England who hath remained in his parish and performed his duty, shall be entitled to receive the provision and support established by the act entitled 'An act for the support of the clergy of the Church of England in this province,' till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish and performed his duty."

In Dorsey all of this section is found except that relating to "laying

a general and equal tax for the support of the Christian religion.' When that part was stricken from the "RIGHTS" of Maryland, I do not know. But it was since 1811, of course. For any thing I can find, it may have been very much later. But the glebe lands still remain in the "Church of England," as the Declaration of Rights says they shall "for ever." And "ALL PERSONS PROFESSING THE CHRISTIAN RELIGION *are equally entitled to protection.*" I abhor such doctrine, confining protection to *Christians*. Why did they not say all *men* are entitled to equal protection?

I give an extract from the life of William Paca, who was chosen Governor of Maryland in November, 1782, and served one year. During this time his biographer says:

"The same paternal care which he thus displayed on behalf of literature, he extended to religion; not the religion of a sect or a party, but that general inculcation and diffusion of the great principles of sacred truth which, as they form the happiness of individuals, so they secure the welfare of nations. Peace was scarcely established, when, in an address to the General Assembly, he thus revived a subject which he justly deemed inseparably connected with the interest of the State. 'It is far from our intention,' he said, 'to embarrass your deliberations with a variety of objects, but we cannot pass over matters of so high concernment as religion and learning. The sufferings of the ministers of the Gospel of all denominations, during the war, have been very considerable; and the perseverance and firmness of those who discharged their sacred functions under many discouraging circumstances, claim our acknowledgments and thanks. The Bill of Rights and Form of Government recognize the principle of public support for the ministers of the Gospel, and ascertain the mode. Anxiously solicitous for the blessings of Government and the welfare and happiness of our citizens, and thoroughly convinced of the powerful influence of religion, when diffused by its respectable teachers, we beg leave, most seriously and warmly, to recommend, among the first objects of your attention on the return of peace, the making of such provision as the constitution authorizes and approves.'

"This suggestion was met with a corresponding spirit by the Legislature, and some of the sects at that time most numerous in the State obtained its aid. The Episcopalians, especially, having met in convention about that time, prepared and presented to the Governor an address, in which they thanked him for his 'great care and attention manifested for the Christian Church in general, and her suffering clergy of all denominations; and prayed the continuance of his powerful inter-

cession till some law is passed for their future support and encouragement, agreeably to the constitution.' And in the same liberal and catholic spirit, Mr. Paca answered, "that it would give him the highest happiness and satisfaction, if either in his individual capacity or public character, he could be instrumental in advancing the interests of religion in general—alleviating the sufferings of any of her ministers, and placing every branch of the Christian Church in the State upon the most equal and respectable footing.'

"At the meeting of the Convention of the same church in the following year, his friend, the learned Dr. Smith, dedicated to him the sermon which he delivered by appointment."—Biography of the Signers of the Declaration of Independence, vol. iv., pp. 124, 125.

These doings of Governor Paca and the Legislature led, as I am told, to a long and very bitter controversy, in which, at last, the principles of liberty prevailed.

Let me read again from "The Declaration of Rights" of Maryland, 35. "That no other test or qualification ought to be required on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this Convention, or the Legislature of this State, *and a declaration of a belief in the Christian religion.*" No man shall excel me in praise of what was excellent in Maryland during our Revolution, but I must say here is a foul blot. I rejoice that in Virginia different counsels prevailed in '76. In Maryland an odious religious test was established by a strange misnomer, as a "Right." That test remains in force to this day. A man cannot be a lawyer, a magistrate, a constable, or any officer, without this test being submitted to by him, unless he is by birth a Jew, and it was not until 1824 that an "act for the relief of the Jews in Maryland" was passed. (See laws for that year, ch. 205.) In other words it was 48 years after the Declaration of American Independence before any Israelite could hold an office of profit or trust in Maryland. I have no doubt that there are many excellent people in Maryland who abhor all these things, or would abhor them if they knew that their code was defiled with them, and they will excuse me if I say I abhor such laws as these; they are Draconian.

PENNSYLVANIA.

Nor will I take for a pattern Pennsylvania, whose laws are, in *many* respects, an outrage on liberty. I cannot dwell on the particulars. I will give you one legal decision in her Supreme Court.

In II. Sergeant and Rawle, Updegraph *vs.* the Commonwealth, in

error, it is decided, that "Christianity is a part of the common law of Pennsylvania;" that the act of 1700 against blasphemy, is neither obsolete nor virtually repealed." The whole case is remarkably interesting and instructive.*

I myself have been served with three writs for a vote or votes given by me in an unincorporated General Assembly. The intention was to fine and imprison me for doing what I believed right. One of these writs was sued out by Rev. Philip Hay, one by Rev. Miles P. Squier, and one by a Judge (I think his name was Brown) from Ohio. It is true the attempt of these men covered them with dishonor; nor did I ever feel more than pity at their proceedings. But what must be the state of laws where such things can be done?

MASSACHUSETTS.

In some of the States, sir, they have *parsons*, that is clergymen, who are sole corporations. We have none such in Virginia; I trust we never may. Angel and Ames say:

"Sole corporations, it is believed, are not common in the United States. In those States, however, where the religious establishment of the Church of England was adopted, when they were colonies, together with the common law on that subject, the minister of the parish was seised of the freehold, as *personæ ecclesiæ*, in the same manner as in England; and the right of his successors to the freehold being thus established was not destroyed by the abolition of the regal Government, nor can it be divested even by an act of the State Legislature. This was held by Mr. J. Story, in giving the opinion of the Supreme Court of the United States, in the case last referred to."

"We are not aware," says the learned Chief Justice of Massachusetts, "that there is any instance of a sole corporation in this Commonwealth, except that of a person who may be seised of parsonage lands, to hold to him and his successors in the same office, in right of his parish."

I remember, also, the flagrant and atrocious perversion of funds in the Hollis professorship in Harvard University, in the same State. I also remember that many houses of worship, and much other church property, created by Orthodox men, have been decreed by the courts of Massachusetts to Unitarians who have long carried on a predatory war against the Orthodox. I also ask the committee to examine (7. Pick-

* So much is charter-making multiplied in Pennsylvania, that now (1847) it is devolved on the Supreme Court. "*Sic transit judex in legislatorem.*" Is liberty, is property safe when the legislative and judicial powers of Government are thus blended? If so, our fathers were great ninnies in insisting so much on their separation.

ering (Mass.) R., especially pp. 329, 330; and 12 Pickering R., especially pp 262, 263,) the case of "Murdock *vs.* Philips' Academy." It will give them a sweet foretaste of what we shall see in our courts in Virginia, if we go into this wholesale, indiscriminate chartering of religious societies.

I cannot, therefore, take Massachusetts as a guide in legislation in religion. I detest many of its legal decisions and the spirit of several of its laws on religion. I could easily travel the round of the old States appealed to, and show you enough to alarm any wise man on this subject. But I have detained you too long already. What becomes now of the declaration of the gentleman, "that in one and all of these States civil liberty is as secure as among us?"

III. *It is said that the Legislature can affix safe and adequate limitations to the proposed corporations.*

To this I reply, that limitations must refer either to the duration of corporations, the number of them, or the amount of property which they can hold.

1. I suppose no limitation of *time* is desired by the petitioners. To say that the powers sought by them and granted by you should cease and determine in 20 or 50 years, would be fatal to their wishes. These religious corporations are very different things from the ordinary corporations of the country, in which the charter may be surrendered, and a dividend of the effects be made among the stockholders at any time without embarrassment. In South Carolina church corporations are limited to 14 years. Would this please the petitioners?

2. If there be a *general* law there can be no limit in the law as to the *number* of corporations. The Legislature cannot say how many each denomination shall have. This would be invidious; and if they were to attempt a restriction it would be found fruitless. Surely the Legislature is not prepared to say that churches hereafter formed shall not have equal rights with those already formed.

3. No limit, as to the *amount of property*, will be found practicable. Let me state a case. A man dies leaving property to a church corporation, the annual avails of which reach the maximum permitted by law. Will the Legislature say to the corporators, if you manage that property well and cause it to yield one dollar more than it does yield by bad management you shall forfeit the whole? Besides, it would be very easy, in many cases, to create a new society, or congregation, to hold any surplus above the maximum fixed by the law. Would it be wise to drive men to these miserable, evasive shifts, or to shut them up, by a kind of necessity, to an unskilful management of their funds? Is

it not to the interest of the State that all the property in it be rendered as productive as possible?

4. Almost innumerable cases can be cited to show that every corporation aggregate has, incidentally, at common law, a right to take, hold, and transmit in succession property to an unlimited extent or amount. See Angel and Ames on Cor., p. 87.

5. It is worthy of inquiry, who, in case of forfeiture, shall take the forfeited property. Shall the Commonwealth? I suppose a moderate degree of political information would convince any man, that it is highly dangerous to personal and political liberty, that the State or government should become proprietor of a large portion of the soil. History so declares. On this point Americans are extremely jealous, and require both the State and National Legislatures, to offer their lands at a very low price. Shall the forfeited property take the direction of fines and escheats, and go into the literary fund of Virginia? This, perhaps, might please some of the inconsiderate friends of education. But I ask them to inquire, whether this would not be buying education at too dear a price.

IV. Of the visitatorial power, I ask the Committee to read and examine the whole of Chapter XIX. of Angel and Ames, and then decide two questions:

1. Whether this power, unless a visiter be named in the charter, is of any practical force in our country?

2. If it be practicable, what would any man's character be worth by the time he had visited ten religious corporations in or out of his own denomination, and exposed their abuses, and the authors of them?

As to the power of visitation exerting a restraining influence, one of the most eminent judges of Virginia, recently said in conversation, "that it was all moonshine." Let it be remembered that this power in England may be exerted very differently from what it can be amongst us. I ask the attention of the Committee to the views of this subject presented in 1 Blackstone, p. 480. I know, indeed, that the donor while living is in some sense charged with a visitatorial power, and that the heirs at law have the same right; but can gentlemen on the other side, with all their vast attainments produce a *single* instance in which either the donor or his heirs, have exercised this power, in a controlling manner, in any State of our Union?

One gentleman told us, that if a charity should be abused, there would be no lack of informers. Does any man seriously believe that voluntary information could be legally given by the best man in the State, as to a dozen institutions of this kind, thus detecting abuses, and

he not find his character riddled by the darts of envy, slander or suspicion, before he had half done his work? Some man may believe this, but surely his powers of credulity must be enormous.

V. One of the gentlemen has submitted a remarkable proposition: it is, that the Presbyterians, at my instance, shall be excepted out of the proposed law, in order that their churches may not be corrupted. To this I answer:

1. It seems, then, that the gentleman would be willing to receive by law, what he esteems a "boon," or a "right," and have it appear on the very face of the law, that another denomination cannot avail itself of the same boon or right. How consistent this is with the language of the petition I leave the Committee to judge. But,

2. I have no authority either to ask or refuse any thing for my own denomination or any other. At the opening of this debate, I explicitly informed the Committee, that I acted as a private person, representing no one.

3. Presbyterians wish neither to ride nor to be ridden. They wish to remain on a perfect equality with all their fellow-citizens. They seek no legal ascendancy for themselves over others; they are determined that others shall have no legal ascendancy over them.

4. Should I accede to the gentleman's proposition, and should the Legislature pass a law of the kind he proposes, the very first judge before whom the law should judicially come, would righteously and promptly pronounce it unconstitutional, or would violate his oath of office. I think, therefore, this proposal is out of the question.

VI. It may be said, indeed, that the Legislature can dissolve these corporations if they become dangerous. If it be so, it ought to be remembered, that even under the British Constitution, where Parliament is said to be omnipotent, there have been to this day but two occasions on which that power has been exercised, viz: in the time of Edward II. and of Henry VIII.; the first, in the suppression of the order of Templars; the second, in the suppression of religious houses. The very highest judicial authority has repeatedly decided, that to dissolve a corporation is contrary to the Constitution of the United States, which forbids the passage of any "*ex post facto* law, or law impairing the obligation of contracts;" and that the Legislature cannot repeal, impair, or alter a charter, against the consent, or without the default, of the corporation, judicially ascertained and declared. See the following cases: Dartmouth College *vs.* Woodward, 4 Wheat. R. 518; Fletcher *vs.* Peck, 6 Cranch, 88; The State of New Jersey *vs.* Wilson, 7 Cranch, R. 164; Terrett *vs.* Taylor, 9 Cranch, 43; The town of

Pawlet *vs.* Clark, 9 Cranch,292; Wales *vs.* Stetson, 2 Mass. R. 143; Enfield Toll Bridge Co. *vs.* Connecticut River Co., 7 Conn, R. 53, per Daggett; J. McLaren *vs.* Pennington, 1 Paige, (N. Y.) Chan. R. 107, per Walworth, Chan.; 2 Kent, Comm. 245, 246; Green *vs.* Biddle, 8 Wheat. R. 1. The Society for establishing useful Manufactures *vs.* the Morris Canal and Banking Co., cited Halst. Dig. 93.

According to the best authority, (2 Kent, Comm. 247, and Angel and Ames, 128. 667,) in case of the dissolution of a corporation, the real estate would indeed revert to the donor or his heirs, if they could be found; but the personal property would become the property of the people, in other words, the property of the Commonwealth. But even real estate would in most cases have been purchased in some way by funds variously contributed. And we have the highest legal authority for saying that "private subscriptions to a public institution are considered in the light of a dedication to the public. They merge in it, and are not susceptible of reclamation;" and that if any would reclaim money thus subscribed, "it is necessary that *each* claimant should be *a party*, and distinctly trace *his title* from the first subscriber down to himself, if even a resulting trust could be raised in favor of those from whom the purchase money moved."*

CHURCH OF ENGLAND.

I hold in my hand a letter relating in good part to the matters before us. I beg leave to read it. It is from a subject of the British crown, a gentleman most reputably connected, both at home and in this country, a gentleman very favorably known in the best circles in this State, and who has long held both my respect and my esteem. It reads thus:

RICHMOND, *January 12th*, 1846.

REV'D. AND DEAR SIR:

It was with deep regret I heard to-day that you had, in a speech delivered before the Committee of the Courts of Justice, reflected very strongly upon the character of the Established Clergy in England—that, amongst other things, you denominated them as steeple-chasers and sporting parsons. I was likewise informed that in animadverting upon the abuses of the Church Establishment you alluded to the enormous wealth of the clergy, and, in support of your assertions, that you read a statement from an article in the Eclectic Review.

I am very sorry that I did not hear your speech, as I certainly, however feebly, should, with permission of the Committee, have endeavored to vindicate the Clergy of England (than whom a more excellent and

*Chancellor Tucker in case of Selden et al., &c.

pious body is not, in my opinion, to be found in the world,) before the Committee—and in doing so I should have informed the Committee that the Eclectic Review was instituted for the avowed object of "*writing down*" the Established Church in England, a fact of which I doubt not you are perfectly aware, and consequently a very prejudiced and questionable witness against it. I should further have informed the Committee that the average incomes of the Clergy of England did not exceed £209 per annum: That by the Church Temporalities Act passed in 1834, the large incomes before enjoyed by the superior orders of clergy, such as Bishops, Deans and Prebendiaries had been reduced to increase the stipends of the inferior orders in the Establishment—and that by the "Church Discipline Act," commonly called the Bishop of London's Act, any Clergyman so oblivious of his sacred office as to attend races, steeple-chases, or the like, would be rendered liable, for the first offence, to suspension for two years, and for a repetition of the offence, to the loss of his gown.

I would then have referred to the favorable testimony borne by the Bishop of Virginia, (an eye-witness,) a man eminent for his piety and virtue, to the conduct of the English Clergy.

I do not presume to dictate to you what you ought to think or say of the Clergy of England, or of the Church Establishment—but I trust you will pardon me for lamenting that you should have lent the sanction of your high authority to the abuse of a church to which I am much endeared, and to which, in my humble opinion, the whole of Christendom owe a debt which they will never be able to repay.

I have the honor to be, with great respect and esteem,

Your obedient humble servant,

A. F. D. Gifford.

To Rev. Dr. Plumer, &c., &c.

In regard to the foregoing letter, I observe that it was written at my instance and request, after a conversation with Mr. Gifford. Finding that gentleman laboring under misapprehensions as to the course of my remarks hitherto, I desired an opportunity of publicly correcting any misapprehensions, under which he or any portion of the public might labor. I assert that I have not abused the English Church, and I refer to the Committee for the truth of this remark.

Concerning the Eclectic Review, it is sufficient to say, that it is supported by a large body of as intelligent and loyal Englishmen as the British Empire affords; and that John Foster was long a large contributor to its pages. Surely the editors of that Review can hardly be believed to be so depraved as to publish deliberate falsehoods about

matters concerning which at least one-half of the English people must be supposed to have correct information, or concerning which there is record evidence to expose any want of veracity.

As to "the Church Discipline Act" referred to by Mr. G., I would observe that the very passage of such an act by the British Parliament, presupposes a strong necessity for it, and argues a more extensive and deep corruption of manners among the English Clergy than any thing I have said on this occasion.

It is not the custom of Legislatures, and particularly of the British Parliament, to spend their time in making laws that are likely to apply to no case. Bishop Meade himself, as already quoted, argues thus in another case in relation to this colony. Legislation purely *in thesi* is practised only by foolish and idle men. And here, let me ask, what sort of Church Discipline is likely to obtain where such men as Bulwer establish the canons of morality?

I would further observe that I am perfectly willing to take Bishop Meade, chosen by Mr. G. himself, as a witness in this case. On pp. 13, 20, 22, of his address to the Convention of his Diocese, May, 1845, I find the following: Speaking of the Episcopal church in England before 1776, he calls her the "Mother Church, over whose defects there was so much cause to mourn." He quotes with approbation the upbraiding words of one in Virginia, to the Clergy of England, thus: "Do they not either wilfully hide their talents, or keep themselves at home for fear of losing a few pleasures?" Again: "Though not so deeply corrupted as the Church of Virginia, yet was the English Church most sadly defective, both in doctrine and practice." He then speaks of a few eminent men, whom God raised up in England, "to bear testimony against the jejune morality of the pulpit, and to condemn, as well by their writings as example, the worldliness both of clergy and people." But among those named as thus raised up, I do not see the name of one, whom I suppose to have been a bishop, though he names three laymen and one woman, Mrs. Moore, a name indeed, which the good must venerate. He then speaks of "some in the Episcopal church of England and America" who "have embraced exploded errors, and subjected the whole church to the charge of retracing its steps towards apostate Rome."

Now, Sir, weigh these things fairly, and call to mind the character given by Bishop Meade of the Foreign Missionaries sent out by the Bishop of London to Virginia, during our colonial existence, and if they do not contain far more severe reflections on the English church

than any thing I have said, I will make any *amende* that duty may require.

Bishop Meade is Mr. G.'s *chosen witness*. Mr. G. would have been more wise to have chosen *me*. I at least have not testified so terribly.

But, Sir, I must choose *my* witness in my turn. He shall be both competent and credible.

I hold in my hand "The History of the Church of England, by Thomas Vowler Short, D. D. Bishop of Sodor and Man." I suppose his testimony against the state of things in England is entitled to some weight. On page 308, speaking of the connection between Church and State, he says: It "has fettered the church with many evils. It has justly authorized the state interfering with clerical appointments, and, from the value of the revenues, which are attached to them, has unfortunately induced those at whose disposal they are placed to select their friends, who are not always the proper persons to fill the situations; while it has induced the clergy to seek for the preferments. The poverty of many of our spiritual cures prevents them, humanly speaking, from being properly taken care of: and God knows whether the wealth of others does not tend to diffuse a want of spirituality through the church." Pretty strong language this for an English Bishop—language implying fully as much as any thing I have said. But he uses stronger still: "It has induced the state, from mistaken kindness, to connect civil penalties with ecclesiastical censures, and by altering the nature of such control, by diverting it from the consciences to the present fears of the sinner, has done away with the utility of them altogether." Worse and worse for a bishop to say. Sir, what must be the state of a church in which ecclesiastical censures have no utility whatever! But he proceeds:

"It has put a stop in a great measure to the exercise of discipline over the members of the church itself." Again: "There are many offending members in it, for the correction and cutting off of whom, no steps are, or perhaps can be, taken."

This is the testimony of a man who thinks "that the establishment contains perhaps as large a number of the real servants of God as any other body of men of the same size," § 818, and who says that "In his parish he [Richard Baxter] did that, which I believe the pastor is directed in Holy Scripture not to do; he tried to draw an outward line between the godly and ungodly;" and who thinks that "the private admonitions of a clergyman and the occasional interference of the civil magistrate [in church discipline] may promote the cause of religion

with greater advantage" than such church discipline as Baxter used. § 613. In note 7, p. 225, the Bishop says explicitly "that ecclesiastical discipline among the clergy has been destroyed;" and he undertakes to tell how; I only add that Dr. Short has been made a Bishop since he wrote this History. It of course was not considered a scandalous publication, but at least sufficiently mild towards the establishment.

I have made these citations not simply because they speak the truth as I believe, but because I wished to show the Committee that I had been moderate and guarded in my statements respecting the English Establishment. I rejoice, and no man shall hinder me from rejoicing, that among the eleven thousand of the English Clergy there are many who manifest a christian temper and are valiant for the truth. But this is despite the connection between church and state. May the number of such increase many fold.

RELIGION IN VIRGINIA ADVANCING.

Allow me to observe, that, if I am not greatly mistaken, true religion has made more progress in this Commonwealth the last 50 years, than in all its previous history. I think the address of Bishop Meade to the Convention of his Diocese clearly maintains the same truth as to the Episcopal Church. He dates all its cheering progress to the last 33 years in his own church. Be it remembered that all this progress has been made under the policy of the government, respecting religion, which it is now proposed to alter. Indeed throughout the United States a degree of religious and moral influence has been reached which has attracted the attention, if not the admiration, of every candid foreigner visiting our shores. I have before me a work which is, in some respects, the most remarkable production of the age. It is De Tocqueville's "Democracy in America." He says (vol 2, pp.27, 28):

"The American ministers of the Gospel do not attempt to draw or to fix all the thoughts of man upon the life to come; they are willing to surrender a portion of his heart to the cares of the present, seeming to consider the goods of this world as important, although secondary, objects. If they take no part themselves in productive labor, they are at least interested in its progression, and ready to applaud its results; and while they never cease to point to the other world as the great object of the hopes and fears of the believer, they do not forbid him honestly to court prosperity in this. Far from attempting to show that these things are distinct and contrary to one another, they study rather to find out on what point they are most nearly and closely connected.

"All the American clergy know and respect the intellectual suprem-

acy exercised by the majority; they never sustain any but necessary conflicts with it. They take no share in the altercations of parties, but they readily adopt the general opinions of their country and their age; and they allow themselves to be borne away without opposition in the current of feeling and opinion by which every thing around them is carried along. They endeavor to amend their contemporaries, but they do not quit fellowship with them. Public opinion is, therefore, never hostile to them, it rather supports and protects them; and their belief owes its authority, at the same time, to the strength which is its own, and to that which they borrow from the opinions of the majority."

"In the United States, on the seventh day of every week the trading and working life of the nation seems suspended; all noises cease; a deep tranquility, say rather the solemn calm of meditation succeeds the turmoil of the week, and the soul resumes possession and contemplation of itself. Upon this day the marts of traffic are deserted; every member of the community, accompanied by his children, goes to church, where he listens to strange language, which would seem unsuited to his ear. He is told of the countless evils caused by pride and covetousness; he is reminded of the necessity of checking his desires, of the finer pleasures which belong to virtue alone, and of the true happiness which attends it. On his return home he does not turn to the ledgers of his calling, but he opens the book of Holy Scripture; there he meets with sublime or affecting descriptions of the greatness and goodness of the Creator, of the infinite magnificence of the handiwork of God, of the lofty destinies of man, of his duties, and of his immortal privileges."—*Ib.*, vol. 2, p. 152. "Give democratic nations education and freedom, and leave them alone."—*Ib.*, p. 153. So say I. "Give us education and freedom, and leave us alone."

DON QUIXOTE.

One of the gentlemen has attempted to be witty, and has said that I seem to be "imitating Don Quixote." Concerning this Don, I am not very bright in my memory. But if I remember rightly, the Don rode a sorrel horse. In this I do sometimes imitate him; but my horse is not, I think, so lean as Rosenante. I think, too, the Don was far from being a malignant man. If the gentleman intended to say the same of me, I thank him for his good opinion. I might admit, also, that the fates of the Don and myself had been somewhat similar in at least one respect. If I am not mistaken he encountered *a wind*-mill or *two*. I am not sure but that I have done the same. But, if I do not forget, the Don had a squire. In this I am unlike him. I stand here all alone.

The said squire, if I remember rightly, did often praise his master, yea, highly applaud him for that, in which others could not, from want of perspicacity no doubt, see any thing to commend. Now, sir, who has acted the part of Sancho Panza in this debate but the very gentleman who esteems me Quixotic? When his colleague [or knight] made his speech, [or tilt,] the squire, I suppose, for fear the committee would not see the merits of his master, instantly rose and told us that the speech was "eloquent, powerful and unanswerable." Is not this just like Sancho? If I remember rightly, Sancho did also, on one occasion, undergo an operation called "blanketing." Whether any one here has suffered, or is suffering any thing like the same, I will not even conjecture, others may judge.

HALLUCINATION.

But the same gentleman says that I "seem to be laboring under a hallucination." On this point it may suffice to say, that if I labor under any hallucination, so did the ablest men we ever had in Virginia. I shall deem it sufficient at this point, to fortify positions previously taken, by adducing some additional authorities, which, I am sure, will have weight with the committee, and ensure respect from all. I do this the more readily as the opinions I shall quote are, in several points, confirmatory of the general grounds I have taken in this discussion.

I suppose no man thought Henry St. George Tucker, as President of the Court of Appeals of Virginia, a weak or visionary man. When he resigned his place in that court to become, with great applause, Professor of Law in our University, I remember that the judges and lawyers in that court unanimously passed resolutions, which, I believe, were as just and true as they were spontaneous and respectful and commendatory. Certainly they did not esteem him as laboring under any "hallucination."

Now, Sir, in the case of Gallego's Ex'rs. *vs.* Att. General, 3 Leigh, pp. 477, 478, 479, Tucker, President, says: "No man at all acquainted with the course of Legislation in *Virginia* can doubt for a moment, the decided hostility of the Legislative power to religious corporations. Its jealousy of the possible interference of religious establishments in matters of government, if they were permitted to accumulate large possessions, as the church has been prone to do elsewhere, is doubtless at the bottom of this feeling. The Legislature knows, as was remarked by the counsel, that wealth is power. Hence, the provision in the Bill of Rights; hence, the solemn protest of the act on the subject of religious freedom; hence the repeal of the act incorporating the Episcopal church, and of that other act which invested the trus-

tees appointed by religious societies with power to manage their property: hence, too, in part the law for the sale of the glebe lands * * *. The Legislature seems to have been fearful that the grant of any privilege, however trivial, might serve but as an entering wedge to greater demands. Nor did this apprehension of the dangers of ecclesiastical establishments spring up for the first time with our republican institutions. The history of ages had attested the proneness of such establishments to vast accumulations of property. (He here cites the history of England and France, and adds:] With these examples before our eyes, it is not wonderful that our statesmen have been cautious. They have been wise in their caution. The evil has not sprung from particular creeds, or the peculiarities of a confession of faith. It grows out of the very nature of the thing. * * * * Property, indeed, it [the church] need not ask of the Legislature. The power to take and accumulate, alone, is necessary: all time has shown that the influence of feelings of devotion will do the rest. I speak of those feelings which exist without any undue influence from the pastor of the Society. But if we go further and suppose it possible that those abuses which once have existed, may exist again, the progress will be more rapid, though not more certain. "What (says the accomplished Sir *Samuel* Romilly,) is the authority of a guardian, or even of a parent, compared with the power of religious impressions under the ascendancy of a spiritual adviser, with such an engine to work upon the passions; to inspire (as the object may be best promoted) despair or confidence; to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of happiness which is never to end?"

The bar and the bench in Virginia have both been elevated and dignified in our times by one of whom I am sure the gentleman on the other side will not say he has labored under any "hallucination." I refer to Judge Stanard, of the court of appeals, himself, like Judge Tucker, educated in the Episcopal Church, having long attached to himself, I am told, the gentleman on the other side, by a most valuable friendship.

What does *he* say?

In the case of Selden et al. *vs.* Overseers of the Poor, decided in the Court of Appeals of Virginia, and reported in II Leigh, Stanard, judge, gave the opinion of the court. Speaking of the time that elapsed from the act concerning the glebe lands to the year 1830, he says (p. 133): "During that period, one or more applications have been made to the Legislature, by one or more religious sects, for acts of incorporation,

to enable them to hold and administer more conveniently for the religious objects of the petitioning sect property to a limited amount, voluntarily contributed for those purposes. It is well known that such applications encountered in the Legislature the twofold objection of their incompatibility with the principles of religious freedom, declared by the act of 1785, and of the inexpediency of exercising the power to create such corporations, though it were constitutional to do so; and that under the influence of one or other of these objections, or of both combined, those applications were rejected by large majorities." He then recites the history of the refusal to grant such power by the convention which in 1829–30 formed our present constitution, declares his belief in the righteousness of the decision of the court in the case of the glebe lands, &c. I recommend an examination of the whole opinion of J. Stanard. The other *sitting* members of the court concurred. So much concerning "hallucination."

THE PRESBYTERIANS.

It has been asked here and elsewhere, Did Presbyterians never seek any corporate privilege from the Legislature of Virginia?

I answer frankly, yes, some of them once did, yet never for an undefined object, but clearly and simply for a theological seminary. Is not this very different from seeking corporate privileges for every congregation and society which has been or may be formed? I am also free to grant that Presbyterians are fallible, as all men are. Whether they erred in this case or not, I will not now discuss; but one thing I will assert, they took the denial in good temper and with a good grace, and never petitioned a second time for the same object. Their seminary is still unincorporated, and so I suppose it will remain.

To bring opposition to the measure before you into disrepute by the *argumentum ad hominem*, it has been said another State has granted corporate powers to the trustees of the General Assembly of the Presbyterian Church. To this I reply:

1. This act of incorporation was passed some years before I was born, and, therefore, if it were wise to seek it, I deserve no praise; if unwise, no censure.

2. Said corporation, though for the whole Presbyterian Church in the United States of America, can by law hold property yielding only an income not exceeding ten thousand dollars per annum. The value of all its investments in May last was less than $83,000. Its accounts and the whole state of its funds are published every year in the most

open manner. If it should err, its errors and abuses must be known to the whole country.

3. Other churches have sought and obtained in the same State, or in other States, the same power. From the first case reported in 4 Wheaton, it appears that the Baptists of Pennsylvania were incorporated in 1797, which was prior to any act of incorporation granted to the trustees of the Presbyterian General Assembly. The Methodists have in New York an incorporated book concern, which is worth not less than $700,000, as I have been informed. The Episcopalians in the same State hold corporate property by scores of millions of dollars.

4. Where these corporate powers are granted to one denomination they create a necessity for every other church to seek the same. They find that as acts of incorporation are multiplied, public opinion and trusteeships furnish less and less security to any property they may hold. Besides, example is contagious, and has an influence none the less powerful because silent. I have no doubt that if you grant the chief prayer of the petition, one church after another will avail itself of the use of it, until at last those persons most opposed to the principle involved will be compelled, in self-defence, to follow the example set them.

ECCLESIASTICAL ASPIRATIONS.

You have been told that "the Constitution of Virginia shuts clergymen out of legislative halls," and that it must therefore be certain "ecclesiastical aspirations" that lead me thus publicly to oppose this petition. On this remark I have several things to say. The first is that I have hardly seen a more remarkable instance of feeble reasoning. "The law forbids murder, therefore you must not give a man a mouthful of bread, for a crumb has sometimes killed a man," would be as good reasoning. I have no objections to stating what I think of the provision of our Constitution, which excludes clergymen from a seat in our Legislature. It is that there are no men more fit to sit in that body than some clergymen in Virginia, but if you should offer them ten thousand a year, you could not induce them to come there. These men in various churches I am willing to trust. There may be some other clergymen in Virginia, who would like to be in the Legislature even more than to preach the gospel. If there be any such, I am glad I do not know them, and I am unwilling to trust *them*, to make laws or to execute them. I, therefore, regard the present fundamental law as excluding no man, who is fit and willing to be there. It is therefore good in its operation, however it may seem to contravene some principles that have been held dear by Americans. Of course I am

speaking of ordinary times. Nothing shall induce me to say one word which might throw a shade over the memory of Witherspoon, Tennent, Hall, and a host of patriotic and eminent divines, who served their country in the Senate or in the field as duty called, in the days of our glorious revolution. When such times return, I hope many will imitate their example. But may not a clergyman come into this hall and listen to the debates? May he not present a petition and memorial in respectful terms? May he not be heard at the bar of the house? May he not be heard before a standing committee of the house *for* or *against* a measure proposed? If it is proof of "ecclesiastical aspiration" in a clergyman to ask the committee to let our laws touching religion alone, what is it to ask the Legislature to change those laws? If it be proof of "ecclesiastical aspiration" to appear before this Committee, why did the two lawyers opposed to me bring in a clergyman to help them out in debate? Sir, "those who live in glass houses ought not to throw stones," or, as a friend has expressed it in Johnsonian numbers: "Those individuals, who are domiciliated in silicic messuages ought not to project granitic fragments." The course of gentlemen, thus involving all they represent, and themselves too, reminds me of Sternhold & Hopkins' version of a part of one of the Psalms:

"He digs a ditch and delves it deep,
In hope to hurt his brother;
But he shall fall into the pit
That he digged up for other.
Thus wrong returneth to the hurt
Of him in whom it bred;
And all the mischief that he wrought,
Shall fall upon his head."

AN ATHEIST.

But, Sir, one gentleman has told you that he has found an atheist somewhere, who is on my side of the question, and therefore, he thinks I must be wrong. In reply I will, ask him, 1. If I will find *two* atheists on his side of the question, will he admit that *he* is wrong? He ought to, if he is sincere in offering such an argument. I have not, however, gone about talking to those beetle-headed animals, called atheists, to get arguments for or against my side of the question. If I had, I suppose I should have used much such arguments as the gentleman does.

2. If there be peaceable, orderly, law-abiding atheists in the community, and such men have often lived, then I contend that they are not to be annoyed by any legislation concerning religion. If there be but

one such, pity him, pray for him, treat him kindly, LIVE A BETTER LIFE THAN HE DOES, with meekness and fear give him your reasons for believing as you do; but do not begin to goad him by laws, which put him under odious disabilities. If there be *such* an atheist as I have described, I hope he does agree with me in opposing the petition.

3. But the gentleman's own history for a short time back furnishes a full answer to this argument. Last spring he was a candidate for the Legislature. Did he then refuse the vote of his old atheist friend? I I do not know that it was offered, but if it had been, would he have refused it? Yet to have accepted it might have looked like leagning with atheists. I will venture to say that he took all the legal votes he could get from any quarter. But this is not all. In that contest there was strong opposition from a brother Whig, and, it is said, that democratic votes decided the contest in favor of the gentleman before you. Now if my cause is not good on *Christian* principles because an atheist *would* vote *with* me, was his cause good on *Whig* principles when the Democrats *did* vote *for* him? If the point bears hard, let the gentleman remember that he made it himself.

CHAMBER COUNSEL.

But it has been said (though I cannot see how it casts any light on the subject before you,) that I have piles of books by me and that I have been borrowing books from an eminent lawyer in town. In reply I say:

1. I wish I could say as much for the other side. I have not seen either of the gentlemen with a book in his hand, except one, out of which two lines were read. My opponents are original geniuses, who soar far above constitutional law and the history of the world. They contemn such dull prose writers as have recorded the opinions and deeds of generations gone by.

2. But, Sir, if it was intended to insinuate that I employed "chamber counsel" or any person to study my argument for me, I can only say it is a mistake. No man has done it, although several of my friends have been very obliging, some of them Episcopalians too, in lending me books and in giving me hints to authorities.

3. Lord Bacon says: "The greatest trust between man and man is the trust of giving counsel;" and I know unasked advice is seldom well received. Yet my counsel is so good that I think it ought to be received. It is that when this question is next argued before the Committee, gentlemen shall read the books they have in their own libraries, and then borrow some more from lawyers, clergymen or booksellers, and not take it for granted that the Legislative Committee will yield to

the personal authority of petitioners. I really regard this as wholesome advice, and will very cheerfully lend to either of the gentlemen any book in my library.

SOME HEAT.

I ask the attention of the Committee, for a moment, to the energy (?) with which my humble request, that you will carefully deliberate before you act, has been met. Argument can be weighed, and, if unsound, may be answered. But I cannot reply to such remarks as these—"infidel objection," "profane attack," &c., &c. "From all uncharitableness, Good Lord, deliver us." I remember of whom it was said that "being reviled, he reviled not again." But I call attention to this matter for the purpose of asking: If gentlemen, who appear before you as *humble petitioners*, feel free to use *such* language, what would they not do, if once they were fairly entrenched behind a few millions of corporate property?

As to the sentiment of Rousseau: "that the man, who first enclosed a field, was the author of all the social ills that followed," which one gentleman says, I "seem to have adopted," I say I abhor it, and he knows that I abhor it, as much as himself, his colleague, or any of the Committee. Nor was there any *occasion*, much less a *cause* for his remark. I quoted from Paine a few sentences so clear, so sound, so well-expressed, that not a gentleman in the house doubts the truth they contain, and for this he would make me responsible for a vile, an infamous sentiment. This is contrary to the very first rule of manly debate, which is "never to impute to an adversary any opinion, which he is known to reject." This attempt, like the statement so often made by the other side, respecting the origin of this debate, and although corrected half a dozen times by the Chairman, still persisted in, can do no harm to me, and I predict it will do no good to my opponents or their cause.

CONCLUSION.

I hope I may say that in the remarks I have submitted, no offence has been taken; certainly none was intended. If I have spoken freely, I have done only what I am willing all others should do; if I have spoken earnestly, the magnitude of the interests at stake must be my excuse. I have had one source of considerable pleasure in this discussion. It has been the conviction that if there be fallacy in my argument, my skilful opponents are the proper men to detect it; and the Committee is the proper tribunal to judge between us; on the other hand, if Troy could be defended by any, she could be defended by those on the other side. I express the wish, that the question may

now be settled by the Legislature for at least half a century to come; although I am not ignorant that out of doors it has been declared as the purpose of some to agitate it from year to year. In his address to the last Convention, Bishop Meade says: (p. 12, of Journal,) "For my own part, whatever may be done by others, I shall continue to inform the church of Virginia [I suppose he means his own branch of the church,] of all such violations of our just rights, and shall be glad to see the Convention uniting, from year to year, with other bodies, in presenting our claims to the Legislature, and making known the grievances under which we labor. Perseverance in a cause so just must eventually, by the blessing of heaven, be crowned with success." I fear we shall see all this effort from year to year. I am sorry that we shall. I can only say, "if any man, or set of men have a native fondness for standing behind a tree, it is no offence to me."

In conclusion, I reciprocate all the personal kindness, which has been expressed by gentlemen on the other side; and thank the Committee for the patience and courtesy manifested by them through the whole discussion.